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2d Session

HOUSE OF REPRESENTATIVES

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SUMMARY OF ACTIVITIES

A REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

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1008-D.

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DECEMBER 30, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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[1] Mr. Richmond resigned from the Small Business Committee August 25, 1982.
[2] Mr. Crockett resigned from the Small Business Committee May 18, 1982.

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ED WEBER
DAVID DREIER

LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C., December 30, 1982.

Hon. EDMUND L. HENSHAW, Jr.,
Clerk, House of Representatives,
Washington, D.C.

DEAR MR. HENSHAW: On behalf of the Committee on Small Business of the House of Representatives, I am pleased to submit this report of its "Summary of Activities" during the 97th Congress.

As past Committee reports, it is deemed that this reference document will be of assistance to all Members of the Committee and Congress as a research tool and historic reference outlining the activities of the Committee on Small Business during the 97th Congress.

This report is filed in conformity with the requirements of Rule XI 1(d) respecting the activities of the Committee and in carrying out its duties as stated in the Rules of the House of Representatives.

Best wishes,

PARREN J. MITCHELL, *Chairman.*

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97TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 97-993

SUMMARY OF ACTIVITIES

DECEMBER 30, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL of Maryland, from the Committee on Small Business, submitted the following

REPORT

SUMMARY OF ACTIVITIES

CHAPTER 1.—INTRODUCTION

This is the fourth summary report of the standing Committee on Small Business. The action by the House of Representatives in adopting H. Res. 988 on October 8, 1974, providing that the committee be established as a standing committee, upgraded the Permanent Select Committee on Small Business by giving the committee legislative jurisdiction over small business matters in addition to the oversight jurisdiction it previously exercised.

The adoption of the House Rules in the 94th through the 97th Congresses confirmed this action and culminated the process begun on August 12, 1941, when, by virtue of House Resolution 294 (77th Congress, 1st session), the Select Committee on Small Business was created. The work of this committee was perpetuated by each succeeding Congress. In January 1971, the House designated the Select Committee as a permanent Select Committee and on October 8, 1974, the 93d Congress, recognizing the importance of the work performed, provided that the committee should thereafter be established as a standing committee.

HISTORICAL BACKGROUND

The history of the Select Committee on Small Business from its inception in 1941 during the 77th Congress to and through 1972, the conclusion of the 92d Congress, may be found in House Document 93-197 (93d Congress, 2d session) entitled, "A History and Accomplishments of the Permanent Select Committee on Small Business."

The committee is bipartisan recognition that the Nation's small business people represent a major segment of our business population and our Nation's strength. This committee, continuing its vital oversight responsibilities, serves as the advocate and spokesman for small business as well as the hub for small business legislation.

In recognition of this expanded jurisdiction, the House of Representatives has increased committee membership to 40 Members. The following Members were named to constitute the committee in the 97th Congress.

Parren J. Mitchell (D-Md.), chairman; Neal Smith (D-Iowa); Joseph P. Addabbo (D-N.Y.); Henry B. Gonzalez (D-Tex.); John J. LaFalce (D-N.Y.); Berkley Bedell (D-Iowa); Frederick W. Richmond (D-N.Y.);[1] Henry J. Nowak (D-N.Y.); Thomas A. Luken (D-Ohio); Andy Ireland (D-Fla.); Ike Skelton (D-Mo.); Billy Lee Evans (D-Ga.); Charles W. Stenholm (D-Tex.); Romano L. Mazzoli (D-Ky.); Nicholas Mavroules (D-Mass.); George W. Crockett, Jr. (D-Mich.);[2]

[1] Mr. Richmond resigned from the Small Business Committee August 25, 1982.
[2] Mr. Crockett resigned from the Small Business Committee May 18, 1982.

Charles Hatcher (D-Ga.); Ron Wyden (D-Oreg.); Dennis E. Eckart (D-Ohio); Byron L. Dorgan (D-N. Dak.); Gus Savage (D-Ill.); Buddy Roemer (D-La.); John G. Fary (D-Ill.); Joseph M. McDade (R-Pa.); Silvio O. Conte (R-Mass.); J. William Stanton (R-Ohio); William S. Broomfield (R-Mich.); Dan Marriott (R-Utah); Lyle Williams (R-Ohio); Olympia J. Snowe (R-Maine); Daniel B. Crane (R-Ill.); John Hiler (R-Ind.); David Michael Staton (R-W. Va.); Vin Weber (R-Minn.); Hal Daub (R-Nebr.); Christopher H. Smith (R-N.J.); Ed Weber (R-Ohio); David Dreier (R-Calif.); Guy V. Molinari (R-N.Y.); Mark D. Siljander (R-Mich.).

Rules of the House—as Adopted by House Resolution 5, 97th Congress

"RULE X.—ESTABLISHMENT AND JURISDICTION OF STANDING COMMITTEES

"THE COMMITTEES AND THEIR JURISDICTION

"1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned to it by this clause and clauses 2, 3, and 4; and all bills, resolutions, and other matters relating to subjects within the jurisdiction of any standing committee as listed in this clause shall (in accordance with and subject to clause 5) be referred to such committees, as follows:

"(s) Committee on Small Business.

"(1) Assistance to and protection of small business, including financial aid.

"(2) Participation of small-business enterprises in Federal procurement and Government contracts.

In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight functions under clause 2(b)(1)); the committee shall have the special oversight function provided for in clause 3(g) with respect to the problems of small business."

"GENERAL OVERSIGHT RESPONSIBILITIES

"2. (b)(1) Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake futures

research and forecasting on matters within the jurisdiction of that committee. Each such committee having more than twenty members shall establish an oversight subcommittee, or require its subcommittees, if any, to conduct oversight in the area of their respective jurisdiction, to assist in carrying out its responsibilities under this subparagraph. The establishment of oversight subcommittees shall in no way limit the responsibility of the subcommittees with legislative jurisdiction from carrying out their oversight responsibilities."

"2. (d) Each standing committee of the House shall have the function of reviewing and studying on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3."

"SPECIAL OVERSIGHT FUNCTIONS

"3. (g) The Committee on Small Business shall have the function of studying and investigating, on a continuing basis, the problems of all types of small business."

"RULE XI

"RULES OF PROCEDURE FOR COMMITTEES

"In General

"1. * * *

* * * * * * *

"(b) Each committee is authorized at any time to consider such investigations and studies as it may consider necessary or appropriate in the exercise of its responsibilities under Rule X, and (subject to the adoption of expense resolutions as required by clause 5) to incure expenses (including travel expenses) in connection therewith."

* * * * * * *

"Power to Sit and Act; Subpena Power

"(m)(1) For the purpose of carrying out any of its functions and duties under this rule and Rule X (including any matters referred to it under clause 5 of Rule X), any committee, or any subcommittee thereof, is authorized (subject to subparagraph (2)(A) of this paragraph)—

"(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings, and

"(B) to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary. The chairman of the committee, or any member designated by such chairman, may administer oaths to any witness.

"(2)(A) A subpena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of any investigation or series of investigations or activities, only when au-

thorized by a majority of the members voting, a majority being present. The power to authorize and issue subpenas under subparagraph (1)(B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe. Authorized subpenas shall be signed by the chairman of the committee or by any member designated by the committee.

"(B) Compliance with any subpena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House."

JURISDICTION OF SUBCOMMITTEES

During the 97th Congress the Committee has been organized into six standing subcommittees each having jurisdiction including the following:

I. SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

Access to SBA services.
Illegal activities affecting small business.
Minority enterprise.
SBA and SBIC authorizations.

II. GENERAL OVERSIGHT

General oversight of activities of Government agencies and legislation affecting small business.
Postal Service.
Procurement.

III. ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS

Anticompetitive activities affecting small business.
Federal Trade Commission and antitrust activities.
Robinson-Patman Act.
Sherman and Clayton Acts.
Unassigned Regulatory Agency activities.

IV. ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS

Department of Energy and related agencies.
Energy allocations, marketing, etc.
Energy Research and Development contracts.
Impact of pollution laws and EPA rules.
Marketing of petroleum products.
Occupational Safety and Health Administration.
Science boards and commissions.
Tennessee Valley Authority.

V. TAX, ACCESS TO EQUITY CAPITAL AND BUSINESS OPPORTUNITIES

Access to equity capital.
Banking practices.

EDA.
Franchising practices.
HUD policies affecting small business.
Impact of tax policies on small business.
Job creation.
SEC handling of ventures.

VI. EXPORT OPPORTUNITIES AND SPECIAL SMALL BUSINESS PROBLEMS

Export opportunities for small business.
Reduction of unnecessary paperwork.
Regulatory Flexibility Act.
Various communications matters affecting small business.
Various Federal regulatory policies and programs affecting small business.
Various transportation matters affecting small business.

DISPOSITION OF LEGISLATION REFERRED

The Committee on Small Business, at the close of the Second Session, has completed action on the majority of legislation referred for its consideration during the 97th Congress.

A total of 66 House bills and one House Concurrent Resolution were referred to this Committee. Fifty were considered and enacted into law, passed the House or were otherwise disposed of; and sixteen await further action.

The Committee's Small Business Innovation Act of 1981, H.R. 4326, was enacted on July 22, 1982, as Public Law 97-219.

In following the Committee's policy of consolidating related measures into omnibus bills whenever possible, numerous measures were combined into omnibus legislation and resulted in enactment of one (H.R. 2998) as part of last year's Budget Reconciliation Act (Public Law 97-35), and House passage of the second omnibus measure (H.R. 6086)

In addition, a Committee initiative was enacted through legislation also pending at other House Committees: Public Law 97-177, the Prompt Payment Act.

CHAPTER 2.—THE SMALL BUSINESS ADMINISTRATION

SBA PROGRAMS AND OVERSIGHT

Although there is some diffusion of responsibility within the Government for the small business sector of our economy, the major Federal agency charged with the mandate to "aid, counsel and assist small business" is the Small Business Administration.

The SBA operates through 116 regional, district and branch offices and has a staff of approximately 4,000 employees. It provides financial assistance, assistance to small businesses in obtaining Government contracts, and management and technical assistance through paid and volunteer staff. It also administers a surety bond program for contractors unable to obtain bonds which are prerequisite to performing contracts and a pollution control guarantee program to assist small businesses in financing pollution control facilities. SBA also serves as an advocate for all small businesses.

The SBA administers an outstanding loan portfolio of $17 billion of which $6.1 billion is comprised of loans to disaster victims. Its 1983 authorizing legislation provides for administrative expenses of $233 million, programs for financial assistance (excluding disaster loans) amounting to $3.53 billion, surety bond guarantees of $1.4 billion, and pollution control contract guarantees of $250 million.

The SBA also administers several programs designed to provide assistance for the economically or socially disadvantaged business person. Perhaps the most significant of these efforts is the section 8(a) business development program. Pursuant to section 8(a) of the Small Business Act, SBA acts as a "conduit" by channeling selected Federal procurement contracts to the disadvantaged. In fiscal year 1982, 3,841 8(a) contracts were let to 1,350 businesses for a total of $1.815 billion. In fiscal year 1981, 4,920 contracts amounting to $1.986 billion were let to 1,619 firms.

A major function of SBA is to make capital available for those small businesses which cannot normally secure financing in the private sector. The SBA maximum bank guaranty loan rate is currently at 2¾ percent above the prime rate, and the direct loan rate is 11⅝ percent.

SBA's business loan program primarily is one under which SBA guarantees a bank or other lender against up to 90 percent of any losses it would sustain on a loan; however, it is a commercial loan and the interest rate is set by the lender subject to an SBA maximum rate. Applicants who cannot obtain a guaranteed loan are eligible to apply for a loan directly from SBA and this would be at an interest rate approximately equal to the long-term cost to the Federal Government of borrowing money.

There has been a continuing need for venture capital for new and growing small businesses. Small business historically has been the seedbed for new technological development and expansion.

Start-up operations face an almost insurmountable problem in obtaining the necessary capital to develop into effective businesses. The committee continues to examine the efforts of SBA to provide greater assistance to this important sector of our economy through its administration of the small business investment company (SBIC) program.

SBIC's supply equity capital and long-term loan financing to small firms for expansion, modernization, and sound financing of their operations. They may also provide management assistance. They are licensed, regulated and, in part, financed by SBA, but their transactions with small companies are private arrangements and have no connection with SBA. An SBIC finances small firms in two general ways—by straight loans and by venture capital or equity-type investments. In fiscal 1982, 363 licensed SBIC's provided their small business clients with $328.9 million in 2,147 financings. In fiscal 1981, $331.2 million was provided in 2,458 financings.

SBA also administers a minority enterprise small business investment company (MESBIC) program similar to the SBIC program. MESBIC's are specialized SBIC's which agree to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. In fiscal 1982, 128 licensed MESBIC's provided disadvantaged small businesses with $46.2 million in 750 financings. In fiscal 1981, $54.8 million was provided in 690 financings.

DISASTER ASSISTANCE

The Small Business Administration provides loan assistance to disaster victims, including homeowners, businesses, and nonprofit institutions. When disaster strikes it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital for recovery as soon as possible. SBA disaster loans serve this purpose and minimize disruptions of jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of a disaster-stricken community, often making the difference in the survival of businesses necessary to that recovery.

During fiscal 1981, 47,261 disaster loans were made for more than $1.47 billion to businesses, homeowners, and others affected by hurricanes, tornadoes, earthquakes, flooding, windstorms, hail, droughts, mudslides, fires, a volcano, and other disasters. During fiscal 1982, 9,784 disaster loans were made for more than $236 million.

During the 97th Congress, major revisions were made in SBA's disaster loan program, both by statute and by regulation. These changes began early in 1981 when the administration took the following actions:

1. It withdrew a pending request for $780 million in supplemental disaster loan funds for SBA;
2. It suspended on March 10, 1981, the funding of all SBA disaster loans, and then published regulations on March 19,

1981, severely restricting eligibility, including (a) the elimination of any eligibility for those businesses (including farmers) able to obtain alternative financing, (b) the limitation of the amount of the loan for those businesses remaining eligible to 60 percent of losses, (c) the imposition of a $100,000 ceiling on economic injury loans, and (d) the elimination of all funding for "nonphysical" disaster loans; and

3. It requested legislation which would have eliminated eligibility for both home and business disaster borrowers with personal resources or alternative sources of financing, and which would have raised interest rates on loans to those without alternative sources of financing to a formula rate representing the government's cost of money plus 1 percent (approximately 15 percent).

These actions were taken without prior notice or consultation with the Committee. The March 19th rules changes were particularly inequitable, as they applied to all pending applications not yet acted upon, with the result that victims of the same disasters were treated differently. Although a large number of loan applications were pending when these restrictions were imposed, the administration refused to change its position, justifying it on the grounds of budgetary necessity.

Shortly after the administration took its unilateral actions, the Congressional budget process forced the Committee to consider statutory changes in the disaster loan program. The First Concurrent Budget Resolution of 1981 contained instructions requiring the Committee to effect major savings in the programs under its juris diction. It was impossible to comply with these requirements without affecting the disaster loan program.

The Committee considered various plans by which these savings could be made, including legislation which the administration had requested. As part of the Committee's examination of the potential effects of the proposed legislation, the staff conducted interviews with victims of recent disasters who had loans approved prior to the administration's rules changes. During April of 1981, the staff took sworn depositions from 100 of these victims in Omaha and Grand Island, Nebraska, and in San Diego, Vista, Burbank, and San Bernardino, California. The witnesses were asked to describe their experiences and what effect the administration's proposed legislation would have had on their recovery had it been in effect when they suffered their losses. Of the 93 physical disaster victims deposed (61 home-owners and 32 businesses), 82 percent indicated that they would not have been able to afford the proposed terms. All recipients of nonphysical disaster loans (both for regulatory compliance and displaced businesses) indicated that without such assistance they would have reduced employment or gone out of business.

On June 3, 1981, the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems held a hearing in which testimony similar to that taken in Nebraska and California was received from Baltimore disaster victims. After considering the information obtained in these field investigations, hearings, and other sources, the Committee met on June 9, 1981, and, after several close votes, recommended disaster program revi-

sions which were accepted by the Full House on June 26th as part of the Omnibus Reconciliation Act of 1981. After further compromise with the Senate, which had basically approved the administration's request, a final plan was approved in Title XIX of Public Law 97-35 on August 13, 1981.

The major revisions made in SBA's disaster loan program by P.L. 97-35 are summarized below together with regulatory revisions made by the administration. In addition to these revisions, P.L. 97-35 provided for the disposition of business loan applications affected by the administration's March 19, 1981 regulations.

SBA DISASTER LOAN PROGRAM CHANGES SINCE MARCH 1981

A. Statutory changes made by Public Law 97-35, effective for disasters commencing on or after August 13, 1981.

(1) P.L. 97-35 imposes a "credit elsewhere" test to determine the interest rate on disaster loans to repair or replace damaged homes and personal property.

Prior legislation treated all home disaster borrowers alike, regardless of their ability to secure alternative financing.

(2) P.L. 97-35 increased the interest rate on all home and personal property disaster loans. Those able to obtain alternative financing pay a formula rate relating to the government's cost of borrowing plus 1 percent. This rate fluctuates and has been as high as 16 percent. As of October 1, 1982, the rate is 13⅝ percent. Those unable to obtain alternative financing pay approximately one-half the formula rate, 6⅞ percent as of October 1, 1982.

Prior legislation provided for a 3-percent interest rate on the first $55,000 of any disaster home loan.

(3) Public Law 97-35 increased the interest rate on disaster loans to businesses unable to obtain alternative financing to a maximum of 8 percent.

Prior legislation provided for a 5-percent rate for businesses in this category.

(4) Public Law 97-35 changed the interest rate on disaster loans to businesses able to obtain credit elsewhere to the commercial "prime" rate in effect on the day the disaster commenced.

Prior legislation provided that businesses in this category would pay a formula rate relating to the government's cost of borrowing.

(5) Public Law 97-35 limits the term of loans to businesses able to obtain alternative financing to 3 years, except to avoid a hardship.

Prior legislation provided for a 3-year "graduation" review. If the business was able to obtain alternative financing at that time, it was required to do so. If not, the business could keep its government loan which would be reviewed again every 2 years for graduation.

(6) Public Law 97-35 limits the amount of eligibility on all business disaster loans to 85 percent of physical losses.

Prior legislation allowed loans to cover 100 percent of physical losses.

(7) Public Law 97-35 rewrote SBA's eight "nonphysical" economic injury loan programs into a single comprehensive "government impact" loan program to help small businesses cope with the ef-

fects of government regulations or decisions. However, no funding of this program is currently authorized.

Prior legislation provided for nonphysical disaster loans designed to help small businesses overcome economic injury due to a variety of circumstances including, but not limited to, government regulations and decisions.

B. Regulatory changes made by SBA, effective March 19, 1981.

(1) Regulations adopted March 19, 1981, changed the criteria by which an actual disaster declaration is made, increasing the amount of damage necessary before SBA disaster assistance can be made available. The new criteria require that either:

(a) 25 homes or businesses must have suffered a 40-percent uninsured loss; or

(b) 3 businesses must have suffered a 40-percent uninsured loss and as a result 25 percent of the work force in the community will be unemployed for at least 90 days.

Under prior regulations, a disaster was of such magnitude as to trigger SBA's disaster program if it met any of the following three criteria:

(a) 25 homes or 5 businesses, or a combination of 25, suffered 25-percent uninsured losses:

(b) 3 businesses suffered 25-percent uninsured losses and as a result 25 percent of the work force in the community would be unemployed for at least 90 days; or

(c) 200 homes or 40 businesses, or a combination of 200, suffered any loss.

(2) The March 19, 1981, regulations also suspended all disaster assistance to any business deemed able to obtain alternative financing and limited remaining business disaster loans to 60 percent of actual losses. However, these regulatory provisions were overturned by Public Law 97-35.

C. Regulatory changes made by SBA, effective for all disasters commencing on or after December 18, 1981, make ineligible for disaster assistance any damages to secondary homes and their contents. Also made ineligible for such assistance were boats, vehicles and airplanes used primarily for recreation or relaxation.

Under prior regulations, disaster assistance could be provided to repair or replace such property.

It is clear that the present terms of SBA's disaster programs are more restrictive than they ever have been and the Committee has been monitoring closely the effects of the revisions made necessary by the budget process. On June 8, 1982, the Committee held field hearings in San Francisco and Santa Cruz, California to hear from victims of severe flooding and mudslides and from public officials from the affected areas about their experiences with SBA's program. On June 19, 1982, the staff also conducted interviews with flood victims in Ft. Wayne, Indiana. These three locations were selected because of the severity of the disaster damage and because they were among the first major disasters to be declared in which the disaster program revisions of P.L. 97-35 were in effect.

Witnesses indicated that the new program terms were, in many cases, causing hardships, much as a substantial majority of the 1981 witnesses in California, Nebraska and Maryland predicted they would. In addition, preliminary data appear to indicate that

the percentage of disaster loan applications which are declined, withdrawn or remain unclosed is increasing.

The Committee will continue to watch this situation closely and, subject to the constraints of the budget process, will do everything possible to ensure that the effectiveness of the disaster loan program is not further compromised.

CHAPTER 3.—ASSISTANCE TO MEMBERS OF THE HOUSE

One of the more important aspects of the work carried on by the House Small Business Committee is the assistance the committee provides Members of the House seeking to help their small business constituents. The committee and its professional staff perform a considerable volume of this "casework" for Members who request such assistance. The problems presented usually require the staff to contact various governmental agencies and departments and frequently entail independent legal research in order to provide satisfactory answers for the Members and their constituents.

In accordance with the well-established policy of the committee, all such requests of Members receive priority consideration.

ECONOMIC REVIEW OF SMALL BUSINESS PROBLEMS

The House Committee on Small Business and its constituent subcommittees provide an ongoing review and summary of the economic impact on small businesses of legislation and Federal Government policy decisions. The review includes a wide range of issues of importance to the small business community. Following is a partial listing:

Economic Outlook: The Economic Outlook is a bimonthly issue brief summarizing the major econometric forecasts and analyzing the impact of economic changes on small businesses.

The most recent report points out that:

(1) Small businesses continue to pay interest rates 7 to 9 percentage points above the rate of inflation—twice the historic average of 3 to 5 percentage points from 1960 to 1978.

(2) Businesses in general and small businesses in particular are in their worst liquidity positions in postwar history.

(3) Economic recovery depends on increases in consumer spending. Weak consumer spending will prolong the recession through mid-1983.

(4) Business investment in durable equipment (machinery) fell $8 billion (in inflation adjusted dollars) in 1982. A further decline of $5 billion is expected in 1983. Net exports (exports minus imports) have also fallen sharply. Neither is expected to stimulate a recovery.

(5) Continuing high interest rates, the longest recession since the Great Depression, and the poor liquidity positions of thousands of businesses have resulted in the highest number of business failures since 1932. Based on the latest Dun & Bradstreet statistics, about 26,000 business failures are expected in 1982. Further delays in economic recovery could push the 1983 failure numbers above the 1932 record of 31,822.

Small Corporations' Share of the Tax Reduction: An issue brief on small corporations' share of the 1981 and 1982 tax changes re-

veals that small corporations [1] will receive a less fair share of the combined benefits of accelerated depreciation, corporation income tax rate reductions and safe-harbor leasing.

Small corporations constitute over 97 percent of all corporations, take approximately 19 percent of depreciation deductions taken by corporations, earn 20 to 21.5 percent of net corporate income, and pay about 21.5 percent of all domestic taxes paid by corporations. Based on their share of depreciation, net income and domestic taxes, small businesses could expect about 20 percent of the tax benefits of accelerated depreciation, corporate income tax rate cuts and safe-harbor leasing. Instead, they will receive approximately 11.5 percent.

Small businesses received about 0.3 percent (three-tenths of 1 percent) of the benefits from safe-harbor leasing in 1981. Because a higher percent of smaller businesses tend to have low profits or no profits in any given year, the inability to take advantage of safe-harbor leasing puts them at a competitive disadvantage relative to large firms.

The fact that small businesses tend to pay higher rates of interest reduces small businesses' ability to invest relative to large businesses and reduces their potential share of the tax cut.

Historically high real interest rates, brought about a combination of tight monetary policy and massive deficits for the foreseeable future, have hit small businesses particularly hard, reducing small business investment and their portion of the business tax reductions.

A higher percentage of total taxes paid by small businesses are in the form of "fixed" taxes, i.e., taxes which do not depend on the level of profits. Therefore, as profits fall, the tax burden of small businesses declines less than for large businesses.

Small businesses tend to be more labor intensive or land intensive (farming) than large businesses. Taxes on both land and labor have risen in recent years while the tax on capital has been sharply reduced and in some cases is negative, i.e., amounts to a subsidy for using capital. In the long-run, subsidizing the use of capital while taxing both land and labor will lower the efficiency with which resources are used in the American economy and lower the rate of growth of total factor productivity.

Business Failures: A preliminary report on Government policy and business failures has found a strong relationship between real interest rates (nominal rates minus the rate of inflation) and business failures. The analysis of the relationship between Government policy and small businesses' economic health is continuing.

Monetary Policy: A series of hearings on the impact of current monetary and fiscal policies have been held by various subcommittees and are described under their activities.

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[1] Small corporations are defined as those with less than $5 million in total assets in 1978 or, adjusting for inflation, $6.9 million in assets in 1982.

CHAPTER 4.—HEARINGS AND MEETINGS HELD BY THE COMMITTEE ON SMALL BUSINESS AND SUBCOMMITTEES, 97TH CONGRESS

FULL COMMITTEE

February 19, 1981—Meeting on "Organizational Caucus".

February 23, 1981—Meeting on "Small Business Issues with Various Trade Association Representatives".

March 12, 1981—Meeting on "Views and Estimates on SBA's Budget".

March 18, 1981—Hearing on "Budget Recommendations".

March 18, 1981—Meeting on "Views and Estimates on SBA's Budget".

April 7, 1981—Hearing on "The Effect of the Federal Monetary Policy on the Small Business Community".

April 29, 1981—Hearing on "Small Business and Minority Problems". (Joint hearing with the Subcommittee on Labor Standards of the Committee on Education and Labor.)

June 2, 1981—Markup of H.R. 2998—Loan Consolidation and Improvement Act of 1981, ordered reported.

June 9, 1981—Markup of Budget Reconciliation, ordered reported.

July 7, 1981—Hearing on "Small Business Issues". (Los Angeles, California)

July 18, 1981—Hearing on "Small Business Issues". (Chicago, Illinois)

September 1, 1981—Hearing on "Small Business Issues". (Phoenix, Arizona)

September 16, 1981—Meeting on "Small Business Issues with Various Trade Association Representatives".

October 6, 1981—Markup of H.R. 4500—SBA 8(a) Pilot Program, ordered reported.

October 22, 1981—Markup of H.R. 4326—Small Business Innovation Development Act of 1981, ordered reported.

January 18, 1982—Hearing on "Small Business Issues". (Atlanta, Georgia)

February 2, 1982—Meeting on "Committee's Budget for 1982".

March 2, 1982—Hearing on "SBA Budget".

March 9, 1982—Hearing on "SBA Budget".

March 15, 1982—Hearing on "Small Business Issues". (Philadelphia, Pennsylvania)

April 8, 1982—Hearing on "Disaster Programs". (San Francisco and Santa Cruz, California)

May 4, 1982—Hearing on "Innovation".

May 11, 1982—Markup of H.R. 6086—1982 Omnibus Bill, ordered reported.

May 18, 1982—Markup of H.R. 4326—Small Business Innovation and Research Development Act of 1981, ordered reported.

SUBCOMMITTEES

Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems

April 7, 1981—Hearing on "SBA Legislation".
May 19, 1981—Markup of H.R. 2998—Loan Consolidation and Improvement Act of 1981, ordered reported.
May 21, 1981—Hearing on "SBA 8(a) Program".
June 3, 1981—Hearing on "H.R. 2997—SBA's Disaster Loan Program".
June 4, 1981—Hearing on "SBA's 8(a) Program".
June 10, 1981—Hearing on "SBA's 8(a) Program".
September 22, 1981—Hearing on "SBA's 8(a) Pilot Program".
September 23, 1981—Hearing on "Cable Television Industry".
September 28, 1981—Meeting on "H.R. 4500, SBA's 8(a) Pilot Program".
October 13, 1981—Hearing on "Cable TV Industry—Small Business Participation".
November 4, 1981—Hearing on "Cable TV Industry—Small Business Participation".
November 12, 1981—Hearing on "Outer Continental Shelf Leasing Activities".
February 25, 1982—Hearing on "Administration Budget Request for Small Business Administration".
April 28, 1982—Hearing on "Pending SBA Legislation".
April 29, 1982—Hearing on "Pending SBA Legislation".
May 5, 1982—Hearing on "H.R. 5022, the Small Business Contract Payment Procedures Act".
May 6, 1982—Markup of H.R. 6086—1982 Omnibus Bill.
June 16, 1982—Hearing on "SBA's Small and Minority Enterprise Development Programs".
September 29, 1982—Hearing on "Economic Dislocation Legislation and the Peso Devaluation Crisis".
November 8, 1982—Hearing on "Economic Dislocation Legislation and the Peso Devaluation Crisis". (San Diego, California)
November 23, 1982—Hearing on "Financial Assistance by Small Business Investment Companies". (San Francisco, California)

Subcommittee on General Oversight

May 19, 1981—Hearing on "Impact of the Reagan Administration's Economic Policies on America's Small Businesses".
June 18, 1981—Hearing on "Government Procurement".
June 23, 1981—Hearing on "Government Procurement".
June 25, 1981—Hearing on "Government Procurement".
July 30, 1981—Hearing on "Impact of Prime Rate on SBA Loans".
September 15, 1981—Hearing on "Innovation".
September 21, 1981—Hearing on "Investigation of Insurance Agents' Commissions".
October 7, 1981—Markup of H.R. 4326—Small Business Innovation Development Act of 1981, ordered reported.
February 18, 1982—Hearing on "Worker Compensation Rate-Setting Reform".
March 23, 1982—Hearing on "Productivity".

March 24, 1982—Hearing on "Productivity".
March 31, 1982—Hearing on "SBA Guaranteed Loans".
June 23, 1982—Hearing on "Business Failure Epidemic".
July 28, 1982—Hearing on "SBA's Section 503 Certified Development Company Program".

Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business

May 7, 1981—Hearing on "Computer and Data Processing Industries".
June 9, 1981—Hearing on "Proposed Conrail Changes and Their Impact on Small Business".
June 11, 1981—Hearing on "Proposed Conrail Changes and Their Impact on Small Business".
July 15, 1981—Hearing on "EPA Regulations of Chloroflurocarbons".
October 3, 1981—Hearing on "High Interest Rates and Their Impact on Small Business". (Cincinnati, Ohio)
October 5, 1981—Hearing on "High Interest Rates and Their Impact on Small Business". (Youngstown, Ohio)
October 8, 1981—Hearing on "High Interest Rates and Their Impact on Small Business". (Omaha, Nebraska)
May 18, 1982—Hearing on "Vulnerability of Energy Distribution Systems".
June 25, 1982—Hearing on "Small Business Failures". (New York, New York)
September 9, 1982—Hearing on "Impact of Federal Antitrust Enforcement Policies on Small Business".

Subcommittee on Energy, Environment and Safety Issues Affecting Small Business

March 31, 1981—Hearing on "Gasoline Marketing Practices".
April 1, 1981—Hearing on "H.R. 1362, Small Business Motor Fuel Marketer Preservation Act of 1981".
October 19, 1981—Hearing on "Energy Conservation by Small Business". (Salem, Massachusetts)
October 21, 1981—Hearing on "The U.N. Energy Conference and Energy in Developing Countries". (Joint hearing with the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce.)
November 4, 1981—Hearing on "Pollution Control Financing for Small Business".
February 11, 1982—Hearing on "Waste Oil Recovery". (New York, New York)
March 10, 1982—Hearing on "Pollution Control Financing for Small Business".
March 15, 1982—Hearing on "Energy Costs". (Cleveland, Ohio)
March 16, 1982—Markup of H.R. 1362—Small Business Motor Fuel Marketer Preservation Act of 1981, no action.
March 31, 1982—Hearing on "Pollution Control Financing for Small Business".
August 4, 1982—Hearing on "SBA's Energy Loan Program".
August 5, 1982—Hearing on "Urea-Formaldehyde Foam Insulation".

December 1, 1982—Hearing on "Gasoline Marketing".
December 2, 1982—Hearing on "Gasoline Marketing Since Decontrol".
December 9, 1982—Hearing on "Market Conditions for Photovoltaic Energy Equipment".

Subcommittee on Tax, Access to Equity Capital and Business Opportunities

March 25, 1981—Hearing on "President Reagan's Economic Program".
March 26, 1981—Hearing on "President Reagan's Economic Program".
April 2, 1981—Hearing on "The Tax Reduction Portion of the Administration's Economic Program and its Effect on Smaller Firms".
June 16, 1981—Hearing on "Estate and Gift Taxes as They Affect Small Business".
June 17, 1981—Hearing on "Estate and Gift Taxes as They Affect Small Business".
September 15, 1981—Hearing on "Job Creation and Revitalization of Small Business".
September 22, 1981—Hearing on "Job Creation and Revitalization of Small Business".
October 14, 1981—Hearing on "Small Business Industrial Development Bonds".
October 15, 1981—Hearing on "The Impact of High Interest Rates on Small Business Capital Formation".
February 24, 1982—Hearing on "The Impact of High Interest Rates on Small Business Capital Formation".
February 25, 1982—Hearing on "Safe Harbor Leasing".
March 24, 1982—Hearing on "Venture Capital Act".
May 19, 1982—Hearing on "Bank Deregulation and its Impact on Small Business Lending".
May 20, 1982—Hearing on "Bank Deregulation and its Impact on Small Business Lending".
September 16, 1982—Hearing on "Tax Incentives and Small Business Exports".
December 1, 1982—Hearing on "Capital Formation". (Joint hearing with the Senate Small Business Committee.)

Subcommittee on Export Opportunities and Special Small Business Problems

April 28, 1981—Hearing on "The Role of Small Business in the USDA's Commodity Procurement Process".
April 29, 1981—Hearing on "The Role of Small Business in the USDA's Commodity Procurement Process".
May 13, 1981—Hearing on "The Role of Small Business in the USDA's Commodity Procurement Process".
July 15, 1981—Hearing on "The Role of Small Business in the USDA's Commodity Procurement Process".
July 16, 1981—Hearing on "The Role of Small Business in the USDA's Commodity Procurement Process".
September 22, 1981—Hearing on "Federal Assistance to Small Business".

September 23, 1981—Hearing on "Federal Assistance to Small Business".
September 30, 1981—Hearing on "Independent Trucker Training Conferences".
October 7, 1981—Hearing on "Regulatory Flexibility Act".
October 20, 1981—Hearing on "Regulatory Flexibility Act".
October 21, 1981—Hearing on "Regulatory Flexibility Act".
April 1, 1982—Hearing on "Regulatory Flexibility Act".
July 27, 1982—Hearing on "FAA Regulatory Flexibility".
August 18, 1982—Hearing on "FAA Regulatory Flexibility".
September 21, 1982—Hearing on "Export Promotion and Small Business".
September 22, 1982—Hearing on "Federal Assistance to Small Business".
September 22, 1982—Hearing on "Regulatory Flexibility Act".

97TH CONGRESS PUBLICATIONS—ALPHABETICAL

Administration's Small and Minority Enterprise Development Programs. Hearing. June 16, 1982. SBA and SBIC Subcommittee.
Amending the Small Business Act and the Small Business Investment Act of 1958. H. Rpt. 97-564. May 17, 1982. Full Committee.
An Implementation Study of the SBA's Energy Loan Program. (Committee Print) Energy Subcommittee.
Bank Deregulation and Its Impact on Small Business Lending. Hearings. May 19 and 20, 1982. Equity Subcommittee.
1983 Budget Request of the Small Business Administration. Hearing. February 25, 1982. SBA and SBIC Subcommittee.
Cable Television Industry. Hearings. September 23, October 13 and November 4, 1981. SBA and SBIC Subcommittee.
Competition in the Computer and Data Processing Industry and Its Effect on Small Business. Hearing. May 7, 1981. Antitrust Subcommittee.
Conrail Changes and Their Impact on Small Business. Hearings. June 9 and 11, 1981. Antitrust Subcommittee.
Current Business Failure Epidemic. Hearing. June 23, 1982. General Oversight.
Energy Conservation and Small Businesses. Hearing. October 19, 1981. Energy Subcommittee.
EPA Proposed Rulemaking on Chlorofluorocarbons (CFCs) and Its Impact on Small Business. Hearing. July 15, 1981. Antitrust Subcommittee.
Federal Assistance to Small Business. Hearings. September 22 and 23, 1981. Export Opportunities Subcommittee.
Federal Assistance to Small Business (Part 2). Hearing. September 22, 1982. Export Opportunities Subcommittee.
High Interest Rates and Their Impact on Small Business. Hearings. October 3, 5 and 8, 1981. Antitrust Subcommittee.
Impact of Estate and Gift Taxation on Capital Formation. Hearings. June 16 and 17, 1981. Equity Subcommittee.
Impact of Federal Reserve's Policies on Small Business. Hearing. April 7, 1981. Equity Subcommittee.

Impact of High Interest Rates on Small Business Capital Formation. Hearing. October 15, 1981. Equity Subcommittee.

Impact of High Interest Rates on Small Business Capital Formation (Part 2). Hearing. February 24, 1982. Equity Subcommittee.

Impact of the Reagan Economic Program on Small Business. Hearing. May 19, 1981. General Oversight Subcommittee.

Impact on Small Business of Proposed Cuts on SBA Guaranteed Loan Program. Hearing. March 31, 1982. General Oversight Subcommittee.

Innovation Revisited. Hearing. May 4, 1982. Full Committee.

Insurance Agent Commission Deregulation. Hearing. September 21, 1981. General Oversight Subcommittee.

Interim Summary of Activities. (Committee Print) September 1982. Full Committee.

International Energy Negotiations. Hearing. October 21, 1981. Energy Subcommittee (Joint hearing with Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce).

Job Creation and the Revitalization of Small Business. Hearings. September 15, 22, and October 14, 1981. Equity Subcommittee.

Job Creation and the Revitalization of Small Business. H. Rpt. 97-434. February 23, 1982. Equity Subcommittee.

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Minority Business Development Efforts of the Small Business Administration. H. Rept. 97-956. December 10, 1082. Full Committee.

Outer Continental Shelf Leasing Policies. Hearing. November 12, 1981. SBA and SBIC Subcommittee.

Pollution Control Financing for Small Business. Hearing. November 4, 1981. Energy Subcommittee.

Pollution Control Financing for Small Business (Part 2). Hearings. March 10 and 31, 1982. Energy Subcommittee.

Productivity. Hearings. March 23 and 24, 1982. General Oversight.

Proposed Administration Tax Cuts and Their Effect on Small Business. Hearings. March 25, 26 and April 2, 1981. Equity Subcommittee.

Retainage, H.R. 5022. Hearing. May 5, 1982. SBA and SBIC Subcommittee.

Rules of the Committee on Small Business. (Committee Print) 1981. Full Committee.

Safe Harbor Leasing. Hearing. February 25, 1982. Equity Subcommittee.

SBA Guaranteed Loan Policies. Hearing. July 30, 1981. General Oversight Subcommittee.

SBA Legislation and Programs (Part 1). Hearings. March 18 and April 7, 1981. Full Committee.

SBA Legislation and Programs (Part 2). Hearing. June 3, 1981. SBA and SBIC Subcommittee.

SBA 8(a) Pilot Program. Hearing. September 22, 1981. SBA and SBIC Subcommittee.

Section 8(a) Pilot Program Extensions. (H. Rept. 97-304) October 28, 1981. SBA and SBIC Subcommittee.

Small and Minority Business in the Decade of the 80's (Part 1). Hearings. July 7 and 18, 1981. General Oversight Subcommittee.

Small and Minority Business Ownership in the Cable Television Industry. H. Rept. 97-976. December 17, 1982. Full Committee.

Small and Minority Business in the Decade of the 80's (Part 2). Hearings. September 1, 1981 and January 18, 1982. Full Committee.

Small and Minority Business in the Decade of the 80's (Part 3). Hearing. March 15, 1982. Full Committee.

Small Business Administration's 8(a) Program. Hearings. May 21 and June 4 and 10, 1981. SBA and SBIC Subcommittee.

Small Business and the Federal Procurement System. Hearings. June 18, 23 and 25, 1981. General Oversight Subcommittee.

Small Business Budget Reconciliation and Loan Consolidation/ Improvement Act of 1981. (H. Rept. 97-150) June 16, 1981. Full Committee.

Small Business Innovation. (H. Rept. 97-349) (Part I) November 20, 1981. General Oversight Subcommittee.

Small Business Innovation and Research Legislation. Hearing. September 15, 1981. General Oversight Subcommittee.

Small Business Innovation Development Act of 1982. (Public Law 97-219) July 22, 1982.

H.R. 1362, Small Business Motor Fuel Marketer Preservation Act. Hearings. March 31 and April 1, 1981. Antitrust Subcommittee.

H.R. 5302, Small Business Venture Capital Act of 1981. Hearing. March 24, 1982. Equity Subcommittee.

Summary of SBA Programs. (Committee Print) February 1981. Full Committee.

H.R. 5551 and H.R. 6086. Hearings. April 28 and 29, 1982. SBA and SBIC Subcommittee.

Trade Association Meetings. Hearings. February 23 and September 16, 1981. Full Committee.

USDA's Commodity Procurement Process. Hearings. April 28, 29; May 13; July 15 and 16, 1981. Export Opportunities Subcommittee.

Vulnerability of National Energy Distribution Systems. Hearing. May 18, 1982. Energy Subcommittee.

Waste Oil Recovery. Hearing. February 11, 1982. Energy Subcommittee.

Worker Compensation Ratemaking Reform. Hearing. February 18, 1982. General Oversight Subcommittee.

97TH CONGRESS PUBLICATIONS—TOPICAL

Authorizations and Limitations

SBA Legislation and Programs (Part 1). Hearings. March 18 and April 7, 1981. Full Committee.

SBA Legislation and Programs (Part 2). Hearings. June 3, 1981. SBA and SBIC Subcommittee.

Small Business Budget Reconciliation and Loan Consolidation/ Improvement Act of 1981. (H. Rept. 97-150) June 16, 1981. Full Committee.

1983 Budget Request of the Small Business Administration. Hearing. February 25, 1982. SBA and SBIC Subcommittee.

H.R. 5551 and H.R. 6086. Hearings. April 28 and 29, 1982. SBA and SBIC Subcommittee.

Amending the Small Business Act and the Small Business Investment Act of 1958. (H. Rept. 97-564) May 17, 1982. Full Committee.

Bank Deregulation Impact

Bank Deregulation and Its Impact on Small Business Lending. Hearings. May 19 and 20, 1982. Equity Subcommittee.

Business Failures

Current Business Failure Epidemic. Hearing. June 23, 1982. General Oversight Subcommittee.

Cable Television Industry

Cable Television Industry. Hearings. September 23, October 13 and November 4, 1981. SBA and SBIC Subcommittee.

Small and Minority Business Ownership in the Cable Television Industry. H. Rept. 97-976. December 17, 1982. Full Committee.

Capital Formation

Impact of High Interest Rates on Small Business Capital Formation. Hearing. October 15, 1981. Equity Subcommittee.

Impact of High Interest Rates on Small Business Capital Formation (Part 2). Hearing. February 24, 1982. Equity Subcommittee.

H.R. 5302, Small Business Venture Capital Act of 1981. Hearing. March 24, 1982. Equity Subcommittee.

Commodity Procurement Process

USDA's Commodity Procurement Process. Hearings. April 28, 29; May 13; July 15 and 16, 1981. Export Opportunities Subcommittee.

Computer and Data Processing Industry

Competition in the Computer and Data Processing Industry and Its Effect on Small Business. Hearing. May 7, 1981. Antitrust Subcommittee.

Conrail

Conrail Changes and Their Impact on Small Business. Hearings. June 9 and 11, 1981. Antitrust Subcommittee.

Energy

Energy Conservation and Small Businesses. Hearing. October 19, 1981. Energy Subcommittee.

International Energy Negotiations. Hearing. October 21, 1981. Energy Subcommittee (Joint hearing with Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce).

An Implementation Study of the SBA's Energy Loan Program (Committee Print). Energy Subcommittee.

Vulnerability of National Energy Distribution Systems. Hearing. May 18, 1982. Energy Subcommittee.

Federal Assistance to Small Business

Federal Assistance to Small Business. Hearings. September 22 and 23, 1981. Export Opportunities Subcommittee.

Federal Assistance to Small Business (Part 2). Hearing. September 22, 1982. Export Opportunities Subcommittee.

Innovation

Small Business Innovation and Research Legislation. Hearing. September 15, 1981. General Oversight Subcommittee.

Small Business Innovation. (H. Rept. 97-349) (Part I) November 20, 1981. General Oversight Subcommittee.

Innovation Revisited. Hearing. May 4, 1982. Full Committee.

Small Business Innovation Development Act of 1982 (Public Law 97-219). July 22, 1982.

Insurance

Insurance Agent Commission Deregulation. Hearing. September 21, 1981. General Oversight Subcommittee.

Interest Rates

High Interest Rates and Their Impact on Small Business. Hearings. October 3, 5 and 8, 1981. Antitrust Subcommittee.

Impact of High Interest Rates on Small Business Capital Formation. Hearings. October 15, 1981. Equity Subcommittee.

Impact of High Interest Rates on Small Business Capital Formation (Part 2). Hearings. February 24, 1982. Equity Subcommittee.

Job Creation

Job Creation and the Revitalization of Small Business (H. Rept. 97-434) February 23, 1982. Equity Subcommittee.

Job Creation and the Revitalization of Small Business. Hearings. September 15, 22 and October 14, 1981. Equity Subcommittee.

Minority Enterprise

Small and Minority Business in the Decade of the 80's (Part 1). Hearings. July 7 and 18, 1981. General Oversight Subcommittee.

Small and Minority Business in the Decade of the 80's (Part 2). Hearing. September 1, 1981. Full Committee.

Small and Minority Business in the Decade of the 80's (Part 3). Hearing. March 15, 1982. Full Committee.

Minority Business Development Efforts of the Small Business Administration. H. Rept. 97-956. December 10, 1982. Full Committee.

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Monetary Policy

Impact of Federal Reserve's Policies on Small Business. Hearings April 7, 1981. Equity Subcommittee.

Bank Deregulation and Its Impact on Small Business Lending. Hearings. May 19 and 29 1982. Equity Subcommittee.

Outer Continental Shelf Leasing Policies

Outer Continental Shelf Leasing Policies. Hearing. November 12, 1981. SBA and SBIC Subcommittee.

Petroleum Marketing

H.R. 1362, Small Business Motor Fuel Marketer Preservation Act. Hearings. March 31 and April 1, 1981. Antitrust Subcommittee.

Pollution Control Financing

Pollution Control Financing for Small Business. Hearing. November 4, 1981. Energy Subcommittee.

Pollution Control Financing for Small Business (Part 2). Hearings March 10 and 31, 1982. Energy Subcommittee.

Procurement

USDA's Commodity Procurement Process. Hearings. April 28, 29; May 13; July 15 and 16, 1981. Export Opportunities Subcommittee.

Small Business Administration's 8(a) Program. Hearings. May 21 and June 4 and 10, 1981. SBA and SBIC Subcommittee.

Small Business and the Federal Procurement System. Hearings. June 18, 23 and 25, 1981.

SBA 8(a) Pilot Program. Hearing. September 22, 1981. SBA and SBIC Subcommittee.

Section 8(a) Pilot Program Extensions (H. Rept. 97-304) October 28, 1981. SBA and SBIC Subcommittee.

Retainage, H.R. 5022. Hearing. May 5, 1982. SBA and SBIC Subcommittee.

Productivity

Productivity. Hearings. March 23 and 24, 1982. General Oversight Subcommittee.

Reagan Economic Program

Impact of the Reagan Economic Program on Small Business. Hearing. May 19, 1981. General Oversight Subcommittee.

Retainage

Retainage, H.R. 5022. Hearing. May 5, 1982. SBA and SBIC Subcommittee.

Rulemaking Oversight

EPA Proposed Rulemaking on Chlorofluorocarbons (CFCs) and its Impact on Small Business. Hearing. July 15, 1981. Antitrust Subcommittee.

Rules

Rules of the Committee on Small Business (Committee Print) 1981. Full Committee.

SBA Programs

Summary of SBA Programs (Committee Print) February 1981. Full Committee.

SBA Legislation and Programs (Part 1). Hearings. March 18 and April 7, 1981. Full Committee.

Small Business Administration's 8(a) Program. Hearings. May 21 and June 4 and 10, 1981. SBA and SBIC Subcommittee.

SBA Legislation and Programs (Part 2). Hearing. June 3, 1981. SBA and SBIC Subcommittee.

SBA Guaranteed Loan Policies. Hearing. July 30, 1981. General Oversight Subcommittee.

SBA 8(a) Pilot Program. Hearing. September 22, 1981, SBA and SBIC Subcommittee.

Pollution Control Financing for Small Business. Hearing. November 4, 1981. Energy Subcommittee.

Small Business Innovation (H. Rept. 97-349) (Part I) November 20, 1981. General Oversight Subcommittee.

Pollution Control Financing for Small Business (Part 2). Hearings. March 10 and 31, 1982. Energy Subcommittee.

Impact on Small Business of Proposed Cuts on SBA Guaranteed Loan Program. Hearing. March 31, 1982. General Oversight Subcommittee.

H.R. 5551 and H.R. 6086. Hearings. April 28 and 29, 1982. SBA and SBIC Subcommittee.

Amending the Small Business Act and the Small Business Investment Act of 1958 (H. Rept. 97-564) May 17, 1982. Full Committee.

Administration's Small and Minority Enterprise Development Programs. Hearing. June 16, 1982. SBA and SBIC Subcommittee.

SBA's Energy Loan Program. Hearing. August 5, 1982, Energy Subcommittee.

Interim Summary of Activities (Committee Print) September 1982. Full Committee.

Taxation

Proposed Administration Tax Cuts and Their Effect on Small Business. Hearings. March 25, 26, and April 2, 1981. Equity Subcommittee.

Impact of Estate and Gift Taxation on Capital Formation. Hearings. June 16 and 17, 1981. Equity Subcommittee.

Safe Harbor Leasing. Hearing. February 25, 1982. Equity Subcommittee.

Trade Association Meetings

Trade Association Meetings. Hearings. February 23 and September 16, 1981. Full Committee.

Waste Oil

Waste Oil Recovery. Hearing. February 11, 1982. Energy Subcommittee.

Worker Compensation

Worker Compensation Ratemaking Reform. Hearing. February 18, 1982. General Oversight.

CHAPTER 5.—COMMITTEE LEGISLATION ENACTED

SMALL BUSINESS SECTION OF BUDGET RECONCILIATION ACT, PUBLIC LAW 97-35[1]

The first omnibus small business legislation of the 97th Congress began when the Committee on Small Business was referred the bill (H.R. 2998) to consolidate and modify the terms of the Small Business Administration programs under sections 7(a), 7(e), 7(h), 7(i), and 7(l) of the Small Business Act and section 501 and 502 of the Small Business Investment Act of 1958. This bill and legislation to revise SBA disaster assistance, H.R. 2997, formed the basis for the omnibus legislation reported by the Committee which became part of the First Session's Budget Reconciliation Act.

INTRODUCTION AND BACKGROUND

(A) BUSINESS LENDING

Chairman Mitchell introduced H.R. 2998 at the request of the Administration. Hearings were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems at which the SBA Administrator testified on April 7, 1981.

The bill (H.R. 2998) was amended and reported from your Committee's Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems by a unanimous vote of those present at a subcomittee meeting held on May 20, 1981.

The Administration's proposed bill in this Congress, H.R. 2998, is basically the same as H.R. 6626 as introduced in the 96th Congress.

The terms of the original bill as offered by the Administration, H.R. 6626, and H.R. 2998 as introduced, would have consolidated programs authorized under sections 7(a) (regular business loans), 7(e) (trade adjustment assistance loans), 7(h) (handicapped assistance loans), 7(i) (economic opportunity loans), 7(l) (solar and energy conservation loans) and 501, 502 (development company loans), into a single discretionary loan program. This new consolidated program would have authorized SBA to make loans to small business for the purpose of plant acquisition, construction, conversion, or expansion (including the acquisition of land to local development companies) and "to assist any qualified small business for purposes of this act" (i.e., the Small Business Act). For the second time, the committee fully considered this request but rejected it in favor of the instant bill which was ordered reported, as amended, by a vote of 37-1.

[1] Full text of Public Law 97-35 (title XIX) set out as app. A.

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The committee continues to believe that each one of the existing loan programs the Administration proposed to eliminate addresses a specific identifiable segment of the small business community deserving of special assistance that would not be forthcoming under the Administration's consolidated loan program. Indeed, the reason why there are such separate programs is because SBA's regular 7(a) loan program was not adequately addressing the needs of these segments of the small business community deserving of special assistance. Not only would these segments lose much needed assistance if consolidation as proposed by the Administration were approved, but Congress would also relegate to the agency an essential legislative right—the right to specify that class or group of small businesses which should receive the benefit of programs financed by the Federal taxpayer.

For example, the 7(h) loan program was and is intended by the Congress to finance businesses owned by the handicapped or which employ substantial numbers of handicapped persons. The 7(i) loan program is specifically designed to assist low income individuals or individuals in high unemployment areas; and the 7(l) program is specifically designed to encourage energy conservation and production. Your committee believes that the features of these specially designed programs, each with their own terms and conditions specifically fashioned by Congress to address areas of national need, can and must be preserved. To relinquish these programs in the interest of administrative ease is to relinquish the prerogative of the legislative branch of Government.

Therefore, the reported version of H.R. 2998 was a compromise measure in regard to SBA business lending functions.

The committee agreed to consolidate the six distinct business loan programs administered by SBA into a single program under section 7(a) of the act. Unequal terms and conditions among the programs were, as requested, eliminated. This effectively ends unequal terms and conditions for assistance under each of the programs.

Under H.R. 2998, as reported, all of SBA's business lending authority would permit SBA to make deferred participation, immediate participation and direct loans to small businesses, employee stock ownership plans and local development companies under terms and conditions which are uniform under statutory guidelines which establish that there will be no diminution of any of SBA's present authority under present statutory provisions governing each of the existent separate SBA business loan programs.

H.R. 2998 provided for a single interest rate for business loans (with one exception, handicapped loans), an extended maturity for all 7(a) loans, and uniform loan amount availability.

(B) DISASTER LENDING

Chairman Mitchell introduced H.R. 2997 at the request of the Administration. Hearings on disaster assistance were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on June 3, 1981.

As introduced, H.R. 2997 would have provided that:

A statutory "no credit elsewhere test" would be applied to applicants for physical disaster loans. Those having access to credit would receive no loan.

The interest rate on physical disaster loans would be based on a formula involving cost-of-money to the Government for comparable length securities plus 1 percent.

The interest rate for each borrower would be set at the time the loan is approved, not as of the time the disaster occurred.

Agricultural business would no longer be eligible for any type of SBA loan assistance.

Economic injury/compliance loan programs 7(b)(3)–7(b)(9) and 7(g) water pollution loans would be repealed.

SBA's economic injury loan program under section 7(b)(2) would have been severely curtailed.

The Committee rejected this disaster loan consolidation as it had in the 96th Congress. H.R. 2998, as reported provided for a consolidated non-physical disaster loan program. Economic injury/Federal action loans under 7(b)(3) substitute for loans formerly made under section 7(b)(3) through 7(b)(9) of the act and section 7(g). Modifications were made in the interest rates and credit criteria for SBA's physical disaster lending program under sections 7(b)(1) and 7(b)(2).

At its meeting of June 9, 1981, the full committee considered necessary reconciliation measures, business and disaster loan consolidation and assistance and technical amendments to the Equal Access to Justice Act. By a vote of 37–1, H.R. 2998 as amended was ordered reported (part of which was approved on June 2 by a vote of 38–0).

(C) SUBSEQUENT CHANGES IN THE COMMITTEE BILL

H.R. 2998 was subsequently adopted as part of the Gramm-Latta substitute for the House Budget Committee's resolution.

House and Senate conferees made extensive changes and agreed on the Small Business section of the Budget Reconciliation Bill which substantially increased interest rates for both regular business loans and disaster borrowers and reduced the amount of financial and other assistance available from SBA.

Specifically, the small business section of the Omnibus Reconciliation Act of 1981 (H.R. 3982, Title XIX) provided for a 32-percent reduction in SBA business lending for fiscal year 1982 and for substantial increases in interest rates for both regular business loans and disaster loans.

Authorization levels agreed upon for fiscal year 1982, fiscal year 1983 and fiscal year 1984 are as follows:

[In millions of dollars]

	1982	1983	1984
Direct loans	230	230	230
Guaranteed loans	3,300	3,300	3,300
Pollution bond guarantees	250	250	250
Surety bond guarantees	1,400	1,400	1,400
Salaries and expenses	227	233	239

In addition, the reconciliation measure included the provisions of the Committee's first omnibus bill, H.R. 2998, which provided for a consolidation of several categorical programs into the 7(a) regular business loan program and unified most interest rates and loan terms, but retained separate funding levels for some of these programs. Those involved include 7(e) trade adjustment, 7(h) handicapped assistance, 7(i) economic opportunity, 7(l) energy conservation and 501 and 502 State and local development company loans. The only exemption from the new unified interest rate will involve loans to handicapped individuals or to organizations for the handicapped. These will remain at 3 percent.

Interest rates for SBA business loans are now set at the cost of money to the Federal Government plus up to 1 percent. Currently this figure is 11⅝ percent.

Congress also legislated a mandatory 90-percent guarantee on SBA financings of $100,000 or less and from 70 percent to 90 percent on financings exceeding $100,000. The 1-percent guarantee fee which banks may pass on to the customer was retained. Interest-only payments which had been approved by the House were dropped. The terms for SBA loans were extended to a maximum of 25 years, plus such time as is necessary to acquire real estate or for construction, conversion, or expansion of facilities.

On SBA disaster lending, Congress extended provisions in the law requiring a "credit elsewhere" test to both business and home disaster applicants only to determine appropriate interest rates. Businesses unable to obtain credit elsewhere would be eligible for disaster loans at not more than 8 percent. Creditworthy businesses would be eligible for money at the prevailing market rate—currently running about 11½ percent—for a maximum term of three years. Business disaster borrowers would be eligible for loans of up to 85 percent of the uninsured loss incurred.

Disaster loan rates for homeowners unable to obtain credit elsewhere would be half the cost of money to the Government, plus 1 percent, up to a maximum level of 8 percent. Creditworthy home disaster borrowers would be eligible for disaster assistance at full cost of money to the Government plus up to 1 percent, currently 11⅝ percent.

Existing law concerning agricultural producers' eligibility for SBA assistance remains unchanged.

The economic injury loan program will remain, but will now include a statutory credit elsewhere test. The former SBA nonphysical disaster loan programs were consolidated into a new "Government impact" loan program, but the new program was not funded.

THE SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982, H.R. 4326, PUBLIC LAW 97-219 [1]

The purpose of the law is to strengthen the role of the small science or technology-based firm's share of programs by unlocking the abilities of these efficient inventors for the benefit of the Federal government and to improve technology transfer to the private sector and the return on investment to the Nation from

[1] Full text of Public Law 97-219 included as app. B.

Federal R&D expenditures. This will be carried out by making easier small business' task of locating funding opportunities that match its capabilities. The new law establishes a three-phased Small Business Innovation Research (SBIR) program, with the first two phases supporting research and/or development on Federal agency objectives and a third phase involving private follow-on funding to pursue commercial objectives from the Federal R&D base.

H.R. 4326 was introduced on July 29, 1981. Three other small business innovation research bills: H.R. 3091, 4343, and 4373—also were introduced in the first session of the 97th Congress. The purpose of the bills was the preservation and stimulation of technological innovation in the small business sector of the economy. The bills did not differ substantively.

H.R. 4326, The Small Business Innovation Development Act of 1982, signed by the President on July 22, requires all government agencies with extra-mural Research and Development (R&D) budgets in excess of $100 million to establish Small Business Innovation Research programs (SBIR's) patterned after the highly successful pilot program instituted at the National Science Foundation (NSF) in response to a congressional mandate nearly six years ago. Qualifying agencies are required to expend a fixed percentage of their extra-mural R&D budgets for this competitive small business program to be phased in over a four-year period as follows: .2 percent in 1983; .6 percent in 1984; 1 percent in 1985; and 1.25 percent in 1986. The Department of Defense is given an additional year because of budget size: .1 percent in 1983; .3 percent in 1984; .5 percent in 1985; 1 percent in 1986; and 1.25 percent in 1987. Agencies with smaller R&D budgets of at least $20 million are to set annual goals for small business involvement in Federal R&D efforts.

Based on the 1982 R&D budget which amounts to nearly $40 billion, 75 percent of which is "extra-mural," nine Federal agencies will qualify for SBIR programs during fiscal year 1983. These agencies are: DOD, NASA, DOE, HHS (NIH), NSF, Agriculture, Transportation, EPA, and the Nuclear Regulatory Commission. The Department of the Interior is likely to qualify the following year. The Congressional Budget Office estimates SBIR program levels ranging from $50 million in 1983 to $465 million in 1987.

Qualifying agencies will actively solicit small business proposals in broad categories of research in a three-phase program. Phase I consists of grants to determine the merits and feasibility of innovative ideas. In Phase II, somewhat larger grants would be available to pursue those ideas which show exceptional promise, with some consideration being given to commericalization potential. Phase III requires private capital funding to pursue commercial application, or, where appropriate, follow-on production contracts for Government use.

The pilot program established at NSF in 1977 has been extremely successful in stimulating innovation, generating business growth, and increasing employment in project award winners. This highly competitive program has won the admiration and respect of both the business and scientific communities. Of modest size, only $5 million, the NSF SBIR program has demonstrated a return on investment of nearly four to one and growing. Employment in par-

ticipating firms has doubled. Extension of this program to other R&D intensive agencies is expected to bring returns to the economy in new technologies and business formations without an increase in the Federal budget.

This bipartisan legislation is a response to numerous studies showing that small firm innovation far exceeds technological breakthroughs by large firms and that the cost per innovation is far less. Yet despite a disproportionately large contribution, small businesses have received only a tiny portion of the Federal R&D dollar. Redirecting a percentage of the Federal R&D effort to these small but efficient and highly innovative performers will be a more effective use of public funds.

H.R. 4326 is similar to Title I of H.R. 5607, reported out of the Small Business Committee during the 96th Congress after five days of hearings. H.R. 5607 was not acted upon by the House before final adjournment. This legislation was included in the top six priority recommendations from a list of 60 recommendations by the 1980 White House Conference on Small Business.

Several small business innovation bills were introduced in the 97th Congress and were considered by the House Small Business Subcommittee on General Oversight in hearings on September 15, 1981. H.R. 4326 was amended to consolidate the best features of these bills and was unanimously adopted and favorably reported by the Subcommittee on October 7, 1981. On October 22, 1981, the full Committee ordered H.R. 4326 to be favorably reported by unanimous vote (H. Rept. 97-349, Part I).

Sequential referral was requested and granted to six other House Committees: Science and Technology; Energy and Commerce; Armed Services; Veterans' Affairs; Foreign Affairs; and the Permanent Select Committee on Intelligence. Chief opponents of the legislation were from the bureaucracy and from large research-oriented universities and large research-related industries. Supporters included the U.S. Chamber of Commerce, the National Federation of Independent Businesses (NFIB), Small Business United, the Independent Business Association of Washington, the Small Business Association of New England (SBANE), the Mid-Continental Small Business United, the Coalition of Small and Independent Business Associations (COSIBA), the National Small Business Association (NSB), past administrators of SBA, SBA's first Chief Counsel for Advocacy and its current Chief Counsel, among others.

Based on a compromise adopted by the Small Business Committee on May 18, 1982, an amendment to H.R. 4326 in the nature of a substitute consisting of the text of a clean bill, H.R. 6587, was considered during House debate on June 17, 22, and 23. Amendments to exempt DOD, NIH, and Agriculture from the program were soundly defeated. The Committee agreed to accept amendments to exempt the intelligence agencies, Atomic Energy Defense Programs, and AID international research centers and grants to foreign governments from the base against which the percentages are applied.

H.R. 4326 was passed by the House 353 to 57 on June 23, 1982. The text of H.R. 4326 was substituted for the text of S. 881 which had passed the Senate 90-0 in December of 1981, and on June 27,

the Senate agreed to concur in the House amendments. The bill was signed in a White House ceremony on July 22.

The Small Business Administration has been given responsibility to monitor independently the SBIR programs and has 120 days in which to issue policy directives.

The Need for New Legislation

(a) innovation and productivity crisis

Technological innovation is critical to economic growth and power and to a high standard of living. Past achievements in technological innovation and productivity have placed the U.S. in an enviable position of world leadership. While there are no precise indices for innovation, the rate of productivity provides possibly the best measure available. Unfortunately, the annual rate of increase of productivity for the U.S. has declined ten-fold over the past ten years and now lags behind that of the rest of the world's major industrial nations. Experts warn that this decline means rising prices, decreased employment, and increased foreign competition for U.S. industry. Moreover, the serious decline in private-sector innovation over the past decade may be a factor to the Nation's major problem, inflation. Federal research and development policies have contributed to the decline by chronic underutilization of the most efficient innovators in our national economy—small business.

(b) small business contribution to innovation

The small business contribution to innovation is impressive. Small firms have demonstrated an unusual ability to innovate, which makes their contribution far greater than their size, as seen in the following figures:

Firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations during the period 1953–1973.

The ratio of innovations to R&D employment is four times greater in firms with less than 1,000 employees than in larger firms.

The total cost per R&D scientist or engineer is almost twice as great in firms of over 1,000 employees than in smaller firms.

On the basis of a sample of major innovations introduced to the market between 1953 and 1973, small firms with up to 1,000 employees were found to produce about 24 times as many major innovations per R&D dollar as large firms with over 10,000 employees, and four times as many as medium-sized firms.

The ratio of innovations to sales is one-third greater in small, high-technology firms than in their larger counterparts.

A survey of the important inventive contributions made by independent inventors and small companies in the Twentieth Century shows the critical part they play. Their contributions include:

Inventive contribution	*Contributor*
Xerography	Chester Carlson
DDT	J. R. Geigy & Co.
Insulin	Frederick Banting
Vacuum Tube	Lee de Forest
Rockets	Robert Goddard
Streptomycin	Selman Waksman
Penicillin	Alexander Fleming
Titanium	W. J. Kroll
Shell Molding	Johannes Croning
Cyclotron	Ernest O. Lawrence
Cotton Picker	John and Mack Rust
Shrink-proof Knitted Wear	Richard Walton
Dacron Polyester Fiber "Terylene"	J. R. Whinfield J. T. Dickson
Catalytic Cracking of Petroleum	Eugene Houdry
Zipper	Whitcomb Judson Gideon Sundback
Automatic Transmissions	H. F. Hobbs
Gyrocompass	A. Kaempfe E. A. Sperry S. G. Brown
Jet Engine	Frank Whittle Hans Von Ohain
Frequency Modulation Radio	Edwin Armstrong
Self-Winding Wristwatch	John Harwood
Continuous Hot-Strip Rolling of Steel	John B. Tytus
Helicopter	Juan de La Cierva Heinrich Focke Igor Sikorsky
Mercury Dry Cell	Samuel Ruber
Power Steering	Francis Davis L. Mannes L. Godowsky, Jr.
Kodachrome	
Air Conditioning	Willis Carrier
Polaroid Camera	Edwin Land
Heterodyne Radio	Reginald Fessenden
Ball-Point Pen	Ladislao and Georg Biro
Cellophane	Jacques Brandenberger
Tungsten Carbide	Karl Schroeter
Bakelite	Leo Baekeland
Oxygen Steelmaking Process	C. V. Schwarz J. Miles R. Durrer

The range and diversity of these inventions are turly impressive. Indeed, the mercury dry cells in our electronic watches, the air conditioners in our homes, the power steering in our automobiles, the FM circuits and vacuum tubes in our hi-fi and television sets, the electrostatic copying machines in our offices, the penicillin and streptomycin in our medicine cabinets, and the list goes on—all of these inventions, which are generally taken for granted, take a new meaning when one identifies them with their sources. The point is that independent inventors and small firms are responsible for an important part of our inventive progress, a larger percentage than their relatively small investment in R&D would suggest.

Returns to the economy are significantly greater when small firms innovate. A 1979 study on the job generating process by Professor David Birch of the Massachusetts Institute of Technology published by the Department of Commerce reported that concerns with 500 or fewer employees accounted for 66 percent of the net new jobs in that period.

The MIT Development Foundation issued a study in 1975 that compared sixteen highly successful leading companies in three categories—mature companies, younger innovative companies, and young technology companies—in terms of employment, tax revenues, and sales between 1969 and 1974. The study reported that:

> Young technology companies with sales equaling only 2 percent of those of the mature industry leaders created 34,369 new jobs, or 34 percent more than the 25,558 new jobs created by the mature companies.
>
> The younger innovative companies with ending sales amounting to only 58 percent of those of the mature companies created 106,598 new jobs, or over four times as many as the mature firms.
>
> Total employment in the mature firms increased at only 3.2 percent over the five years, compared to 24.7 percent for the innovative companies.

The innovative companies provided nearly $2.3 billion of income tax revenues, compared to $1.5 billion for the mature companies, or 34 percent more taxes.

A study of 269 firms by the American Electronic Association found new high-technology companies to be the greatest generator of new jobs. Dr. Edwin V. Zschau of the AEA presented the results of that study to the Senate Committee on Small Business in February 1978. The report showed the following growth of employment for newly established firms as contrasted to the more mature companies:

Years since founding	State of development	1976 rates employment growth (percent)
20-plus	Mature	0.5
10 to 20	Teenage	17.4
5 to 10	Developing	27.4
1 to 5	Startup	57.7

The MIT-Birch study also emphasizes the tax-generating benefits of innovative companies—nearly three times the level of tax revenues as a percentage of sales as compared with mature firms. The large and powerful flow of benefits which include new jobs, exports, and tax revenues realized for each dollar of capital investment starts soon after the investment is made and is substantially greater in small innovative firms than in large corporations.

Similarly, the AEA study reported that annual benefits to the economy realized in the year studied for each $100 of equity capital that has been invested in start-up companies founded between 1971 and 1975 were:

	Per year
Foreign sales	$70
Personal income taxes	15
Federal corporate taxes	15
State and local taxes	5
Total taxes	35

Despite these impressive figures, capable small technological businesses are consistently overlooked and underutilized by R&D

procuring agencies of the Federal government. And despite frequent assurances by these same agencies over the past few years that they will voluntarily improve their performance in making R&D awards to small business, the percentage of the R&D budget going to small firms remains virtually unchanged at less than 4 percent.

(C) UNDERUTILIZATION OF SMALL FIRMS IN FEDERALLY FUNDED RESEARCH AND DEVELOPMENT

R&D spending is a crucial element in the innovation process. Because of the major role which the Federal government assumes in the Nation's R&D, Federal policy and programs have major implications.

Over the past decade, the Federal government's support of R&D has accounted for slightly more than one-half of all R&D funds spent in the U.S. Even after expenditures have been adjusted for inflation, the amount has steadily increased, although the rate of growth has slowed somewhat since fiscal 1978.

In fiscal 1982, the Federal government is expected to spend about $40 billion on research and development. However, only a tiny fraction of that amount will go to small businesses. While small businesses account for nearly 50 percent of the gross national product, they receive only about 24 percent of Federal procurement funds and less than 4 percent of the Federal R&D dollar. The small business share of Federal R&D outlays for fiscal 1980 (the most recent year for figures) in the major R&D agencies ranged from 7.6 percent for the Department of Energy and 6.2 percent for the Department of Defense to 2.3 percent for the National Aeronautics and Space Administration and 1.5 percent for the National Institutes of Health.

Federal support for R&D is concentrated in big businesses, laboratories, universities, and non-profit organizations. A 1979 report by small business members who served on the Department of Commerce Industrial Innovation Advisory Committee disclosed that six industries accounted for 85 percent of all U.S. industrial R&D. At the time of their study, more than 80 percent of industry's R&D was being carried out by only 200 firms. More recent figures indicate that ten companies were responsible for 35 percent and 36 companies did more than 60 percent of the nation's R&D. This concentration of private R&D in a few large entities is contrary to the national interest. Because of the historical contribution made to innovation and productivity by small firms, Congressional committees have been very concerned about concentration of R&D activities and have investigated this development. Direct Federal support for applied R&D to large companies, Federal laboratories, and universities has continued to grow, while small science and technology-based enterprises, the most innovative sector of the American economy, continue to be virtually excluded from effective participation.

This pattern is distressing yet not surprising. Small businesses are adventuresome and willing to take risks. In fact, their rewards come from the risks they take. However, their willingness to engage in risk makes them anathema to bureaucracies such as the

Federal government because of the possibility of failure and the penalties incurred in those bureaucracies for failure. Thus, there is an overwhelming bias in the Federal government against dealing with small businesses.

Given the long history of agency opposition to fully and effectively utilizing small business, the Committee believes that Congressional action is mandatory if agencies are to establish and implement SBIR programs on any substantial basis and increase R&D funding awards to small businesses. The Committee is gratified that the Administration reversed its prior opposition to the legislation, and on October 6, 1981, announced its support for the small business innovation bill that had been reported out by the Senate Small Business Committee.

The Committee feels strongly that the SBIR program is the most effective way to utilize small, high-technology firms and stimulate innovation. The case for this approach has been significantly strengthened by a recent General Accounting Office study that concluded that the NSF SBIR program meets all the criteria necessary for innovation to occur.

The NSF program was initiated in 1977 at the direction of Congress to stimulate quality research proposals from small businesses in NSF program areas. To reach high-caliber small firms, NSF designed a special three-phase program with incentives of particular interest to small science and high-technology-based firms.

Phase I supports small (up to $30,000) six-month research awards. The purpose of this phase is to determine whether the research idea appears technically feasible and whether the firm can do high-quality research. Phase II is the principal research project where awards average $200,000 for one to two years and funds those proposals found most promising after Phase I. Phase III is intended to pursue potential commercial developments from government research where possible and is funded entirely with private capital.

Between 1977 and October 1981, the NSF SBIR program received over 2,000 research proposals and funded 286 of them. The results have been impressive. According to NSF, the 21 phase II grantees in the 1977 solicitation have received $23 million in private follow-on funding. Major investments have been made in two small firms by a major chemical company and a small business investment company and six smaller ones in six other firms. These 21 firms have also doubled their employment. NSF funding in phases I and II totalled $5.3 million. There have been a number of new firms started as a result of the program, and some fifteen inventions reported. A number of new products and processes are under development, and one instrument to measure the fracture toughness of metal (drilling bits) is already sold worldwide. Roland Tibbets, the NSF program officer responsible for the SBIR program, is to be commended for his outstanding work and dedication in creating such an impressive program.

The small firms that are the innovators are usually new entrants to the Federal marketplace, often on the basis of unsolicited and sole-source proposals. But that source of "seed money" in the Federal agencies has all but dried up. Today, small, innovation-oriented new ventures start out under a serious handicap because

seed money required to demonstrate the feasibility of a technologically sound idea is often unavailable. Venture capital is readily available for safer ideas with prospects of early returns on investment but venture capitalists are not interested in inventors. This problem has been called a "capital gap." Recent trends in Federal procurement practices have reduced the chances for small business entries because of great reliance on established suppliers and a lessened willingness to accept unsolicited proposals, particularly from small enterprises.

The need to provide capital to encourage risk-taking for new ideas has been identified by numerous sources. The Report of the Commerce Technical Advisory Board to the U.S. Secretary of Commerce a few years ago stated that the most important change in the environment for starting and developing new high-technology companies in the recent past has been the decline in the supply of risk capital for small companies. Furthermore, the report identified the major weakness in our national support of the innovative process as a lack of financing during the period of verification of theory through field trail, or feasibility testing.

Unless a vigorous Federal policy is adopted which recognizes the importance and the value of small business participation, small business will continue to be underutilized in Federal R&D procurement. Agency scientists and engineers are often under severe pressure to make the safest choice, even if such choice brings lower returns. There is little effective criticism of an award to an industrial giant which experiences significant cost overruns or fails to meet a completion date. The same tolerance by those within an agency is not evident when a small firm is involved. Moreover, it is easier to monitor a small number of large contract projects than a large number of small ones, even when the cost is lower or the return may be far higher from the small firms. This tendency to favor larger entities can only be neutralized by a Federal policy which requires significant utilization of smaller firms.

CHAPTER 6.—COMMITTEE LEGISLATION REPORTED

8(a) ARMY PILOT PROGRAM EXTENSION

On October 6, 1981, the Committee met and ordered reported H.R. 4500, a bill to extend the 8(a) Army Pilot Program until September 30, 1983. The bill also includes extension of the Surety Bond Waiver Program through fiscal year 1983 (H. Rept. 97-304).

The 8(a) Army Pilot Program was included in Public Law 95-507, now more than three years old. It is designed to provide assistance to economically and socially disadvantaged small business in contracting areas not commonly reserved for the regular 8(a) program. The procurement contracts for these SBA-certified businesses are to be in specialized technological, manufacturing, and construction areas. After enactment of the law including the pilot procurement program, President Carter chose the Department of the Army as the agency to be designated for the program.

As provided in the original law, the pilot program expired on September 30, 1981. An extension was recommended because both SBA and the Department of the Army moved slowly in implementing the program. It was nearly 18 months into the two-year program before the Federal agencies agreed upon guidelines for the program. The pilot program had been extended once before.

The surety bond waiver section of the bill is designed to help small businesses receive contracts through SBA's 8(a) Business Development Program. It would allow SBA to waive requirements that a firm be bonded if it is found that the firm cannot obtain the necessary bonding from a conventional surety bond company or through SBA's surety bond guarantee program. This program has also been slow to be implemented and to no firms received the surety bond waiver.

The Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems held hearings on H.R. 4500 in late September 1981. Witnesses testifying included SBA Administrator Michael Cardenas; Henry Eschwege, Director, Community and Economic Development, General Accounting Office; and Al Harrell, President, HI-LO Industries, a firm participating in the program. The Committee reported H.R. 4500 on October 28, 1981. The bill passed the House November 17, 1981.

In further action, the provisions of H.R. 4500 were included as section 20 of H.R. 6086 (S. 1947), as passed the House June 8, 1982.

(A) Pilot procurement program

Section 8(a) of the Small Business Act of 1953, gives the Administrator of the Small Business Administration (SBA) the authority to enter into procurement contracts with Federal agencies and, in turn, to subcontract the work to small socially and economically disadvantaged businesses. Under the regular 8(a) procurement pro-

gram, the Administrator of SBA is merely authorized to request suitable procurement requirements from Federal buying activities for use in the program. If lower level personnel in the buying activity and SBA cannot agree upon the selection of the requirement, the Administrator of SBA can appeal to the head of the activity (i.e., the Government agency letting the contract), who is the final authority to decide the issue.

Public Law 95–507, signed into law on October 24, 1978, established a 2-year pilot procurement program wherein the President would designate an agency with which SBA would have increased authority to negotiate any contract requirement it selects for use in the 8(a) program.

The President selected the Department of the Army as the 8(a) pilot agency on January 10, 1979. On May 24, 1979, SBA and Army entered into an interagency agreement which established the formal terms and arrangements for the implementation of the 8(a) pilot program.

In the 8(a) pilot procurement program, the SBA has the exclusive unilateral authority to select (i.e., reserve) any procurement requirement for use in the program. Appeal to the head of the buying activity (i.e., Army, the Government agency letting the contract) can only be taken when SBA and the lower level personnel in the activity cannot resolve the terms and conditions of the proposed contract. The head of the activity has the exclusive authority to set such terms and conditions but cannot override SBA's selection of the particular requirement.

(B) Bond waiver pilot

The second pilot program established by Public Law 95–507, allowed the SBA to waive, in certain specific circumstances, and under stringent conditions, Federal bonding requirements that otherwise would attach to Government contracts awarded through the 8(a) program.

These criteria which must be present in order for SBA to waive bonding requirements are:

1. SBA must protect the rights of those supplying materials and labor to the 8(a) contractor;
2. The contractor must be unable to obtain a surety bond even with an SBA guarantee;
3. SBA must with the contractor so that it becomes bondable; and
4. The contractor must be a start-up concern (SBA has defined this as a firm in a business requiring bonds for less than two years) and must not have been in the 8(a) program for more than one year.

The basic intent of this pilot is to assist a startup firm to obtain a "track record" in a manner commensurate with protecting the interests of material suppliers and laborers of the 8(a) firm.

However, SBA has not waived any bonds under this pilot. Final regulations were published on December 17, 1980 but the Agency still has not issued guidelines or standard operating procedures.

Both pilots were extended for one year by Public Law 96–481 and expired September 30, 1981.

The Committee continues to believe that SBA should have made a greater effort to comply with the original law. The amendments in H.R. 4500 were the result of extensive consideration by your committee; and it was unanimously ordered favorably reported, without amendment to the House.

Your committee still believes that the provisions of this bill are needed by those socially and economically disadvantaged business persons participating in SBA's business development program; that it is needed to realize original congressional intent of testing the efficacy of new approaches for economic development; and that it represents a reasonable, adequate and inexpensive means to achieve these purposes.

SECOND OMNIBUS BILL OF THE 97TH CONGRESS—H.R. 6086 (H. REPT. 97-564)

The Committee's bill, H.R. 6086, as amended, is comprised of changes in three SBA program levels; a requirement that SBA fully utilize its program levels and keep a record of applicants; a prohibition against SBA refusing to issue guarantees on pollution bonds simply because the project involves tax-exempt revenue bonds; a prohibition against SBA arbitrarily refusing to approve surety bond guarantees on contracts eligible under statutory provisions; codification of existing regulations on interest rates on guaranteed loans; a requirement that SBA follow the Administrative Procedure Act if it revises its size standards; and a requirement that there be a 45-day lead time for Federal procurements between publication of notice of a pending procurement and issuance of the contract (the latter provision was H.R. 5551).

In accord with the Committee's decision of last March to channel the limited amount of direct loans to areas of high unemployment, SBA's direct loan program has been extensively modified, and uniformity in application of labor surplus area procurements has been provided.

The bill codifies the current generally adhered-to practice of SBA notifying the Small Business Committee before reprograming any program levels, and requires notification to the Committee before implementing any reorganization.

Finally, the bill clarifies the status of certain questions which have arisen concerning administrative restrictions on funding which SBA provides for its Development Company and Minority Small Business Investment Company Programs, and places certain restrictions on the use of SBA's 7(a) loans to facilitate abortions.

INTRODUCTION AND BACKGROUND

Chairman Mitchell introduced both H.R. 6086 and H.R. 5551. The latter bill had fifty-five cosponsors in the 97th Congress. Hearings on these bills and other pending legislation were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on April 28 and 29, 1982, at which the SBA Administrator and private sector witnesses testified. Due to reporting time constraints, on May 12 the full

Committee discharged the Subcommittee from further consideration of the bill.

In subsequent action on May 12, 1982, the full Committee ordered the measure, as amended, reported to the House by a vote of 38 to 0.

As passed the House on June 8, 1982, the main features of H.R. 6086 are as follows:

1. *Program Levels*—Section 1 would increase existing authorized program levels in 1983 and 1984 for MESBIC's, SBIC's and EOL guarantees as follows:

A. The existing authorization for MESBIC funding is $35 million per year in each of fiscal years 1982, 1983, and 1984. The administration has requested an increase in the level to $41 million each year. The bill would increase it to $41 million in 1983 and 1984.

B. The existing authorization for guarantees of debentures for SBIC's is $160 million in each of fiscal years 1982, 1983, and 1984. The bill would increase it to $250 million in 1983 and 1984.

C. The existing authorization for economic opportunity loan guarantees is $60 million in each of fiscal years 1982, 1983, and 1984. The bill would increase it to $167 million in 1983 and 1984.

2. *Mandate Spending*—Under existing law the Small Business Act specifies the maximum amount of loan and guarantee assistance which may be made available but does not require any minimum. Section 2 of H.R. 6086 would require SBA to approve assistance in the maximum amounts permitted in appropriations acts unless there is a lack of qualified applicants for assistance.

This amendment expressly recognizes and permits changes by reprogramming requests if approved by the Appropriations Committees.

3. *Pollution Control Financing*—Under existing law SBA has taken the position that it need not approve guarantees under the Pollution Control Guarantees Program if the proceeds for the project are from tax-exempt revenue bonds. Section 3 of H.R. 6086 would expressly prohibit the administration from denying the guarantee because tax exempt financing is involved.

In addition, this amendment expressly makes the change applicable to those applications pending on January 1, 1982 or made after December 31, 1981.

4. *Surety Bonds*—In order to reduce budget levels, early in 1982 SBA limited surety bond guarantees to a maximum of $250,000 (instead of the statutory $1 million) and further limited the maximum amount to not more than 125 percent of the amount of the firm's highest previous successfully completed contract. As of April 1, 1982, SBA eliminated the $250,000 cap and increased the percentage limitation from 125 percent to 200 percent. Section 4 of H.R. 6086 would expressly prohibit SBA (or SBA upon instructions from OMB) from limiting the maximum amount of a bond below the statutory limit and from utilizing a percentage increase limitation except on a case-by-case basis. Although SBA may have eliminated most of the problem with its April 1 change, nonetheless it can just as easily reverse itself again. Therefore, the matter should be addressed in statute.

5. *Guaranteed Loan Interest Rates*—The Small Business Act does not have an expressed interest rate for the 7(a) guaranteed loan

program. Therefore, under existing law SBA has used its discretion to set guaranteed loan interest rate maximums at the prevailing commercial prime rate plus 2¼ percent on loans with maturities of less than seven years and at prime plus 2¾ percent on loans with maturities of seven years or more. In 1981 the agency proposed eliminating the add-on, and this would have been disastrous for the program. SBA is not actively pursuing the proposed change, but its National Advisory Council has recommended a new formula limit based on Treasury bills. Section 5 of H.R. 6086 would set the maximum rate at prime plus the percentages now in existence via regulation.

This amendment would freeze the existing "prime plus" formula until June 30, 1983 to permit full review of this matter.

6. *Record of Applicants*—SBA does not now keep a record of those who inquire about SBA assistance and thus is never in a position to give Congress a valid indication of program demand. Section 6 of H.R. 6086 would require SBA to keep a record of the names and addresses and amounts requested by loan applicants or those who inquire about loan availability.

7. *Small Business Committee Notification*—Section 7 of H.R. 6086 would codify the current generally-adhered to practice of SBA notifying the Small Business Committees before reprogramming any program levels and to require that SBA notify the Committees before implementing any reorganization.

8. *Technicals Regarding Loan Consolidation*—Last year's reconciliation bill did not update cross references to the individual separate loan programs which were consolidated into section 7(a). Sections 8 and 9 (a)–(c) of H.R. 6086 change the references.

9. *Labor Surplus Area Direct Loan Program*—Sections 10 and 11 of H.R. 6086 establish a new direct loan program directed toward areas of high unemployment, especially if the loan proceeds will be used for construction, renovation, or purchase of land, buildings, machinery, or equipment. Each SBA district office would receive an allocation of total direct loan funds based upon the amount of unemployment in the district.

10. *Labor Surplus Procurement*—Section 13 of H.R. 6086 would make certain technical amendments to existing legislative authority pertaining to the labor surplus area procurement set-aside program. In addition, re-enacting subsections (d), (e), and (f) of section 15 of the Small Business Act would promote a greater degree of uniformity in the Federal acquisition system by removing the existing prohibition against DOD participation in total labor surplus area set-asides.

11. *Notice of Federal Procurements*—Section 14 of H.R. 6086, which incorporates H.R. 5551, would establish minimum notice requirements for Federal procurements advertised in the *Commerce Business Daily:* Fifteen days between publication of the notice of issuance of the request for bids or proposals and an additional 30 days after such issuance and awarding of the contract.

12. *Technical Disaster Changes*—H.R. 6086 corrects technical errors regarding the disaster changes made by last year's reconciliation bill.

13. *Size Standards*—SBA maintains that promulgation of rules and regulations regarding size standards is not mandatory under

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the Administrative Procedure Act but they have voluntarily brought themselves under the act. Section 16 of H.R. 6086 would expressly mandate that any size standard changes be in accordance with the Administrative Procedure Act.

14. *MESBIC Financing*—The GAO originally issued an opinion that MESBIC's could use State or other Federal financing as part of their leverage to obtain SBA funds. A few MESBIC's relied on this and were organized on this basis. Subsequently, the GAO reversed itself. Section 17 of H.R. 6086 would allow MESBIC's, which relied on the original GAO ruling prior to its revocation, to obtain SBA funding as permitted under the original ruling.

15. *Development Company Working Capital*—Under section 502 of the Small Business Investment Act of 1958, the use of financial assistance provided by SBA to development companies is restricted to land, capital improvements, and machinery needs of assisted small business concerns. Section 18 of the bill expands the permitted use of proceeds to include working capital.

16. *Source of Development Company Funds*—Guarantees on behalf of development companies under section 503 of the Small Business Investment Act of 1958 may be used to provide funding for up to one-half of project cost. SBA has refused guarantees if the non-SBA portion is partially or wholly funded by Industrial Revenue Bonds. Section 19 of the bill would prohibit SBA from using the source or nature of the other funds as a criteria of eligibility.

17. *8(a) Pilot Programs*—Both the 8(a) Procurement Pilot and Surety Bond Waiver Pilot Program extensions through fiscal year 1983 (as originally in H.R. 4500) were included in H.R. 6086 as section 20.

18. *Limitation on Use of SBA Loans*—H.R. 6086 amends the SBA's section 7(a) loan authority to prohibit financial assistance to benefit any applicant which performs abortions, engages in abortion research, promotes or recommends abortion, or provides abortion training.

In all events, promotion or training for abortion is not to be financed. However, if an applicant performs abortions or promotes or recommends abortion only in cases where the life of the mother would be endangered if the fetus were carried to term, such activities would not preclude SBA 7(a) assistance.

19. *Effective Date*—In order to comply with requirements of the Budget Act, H.R. 6086 was to be effective October 1, 1982.

The Committee continues to believe that the initiatives taken in H.R. 6086 must be accomplished. Predictions made in the report on this legislation are unfortunately borne out by year-end data on SBA activities, e.g. from fiscal year 1981 levels, SBA business loans are down 46 percent and minority loans are down 51 percent. Therefore, the Committee wishes to republish its rationale for H.R. 6086, as reported, as an indication of its intent to press for these initiatives in the 98th Congress.

NEED FOR THE LEGISLATION

(A) AUTHORIZATIONS FOR PROGRAM LEVELS

Public Law 95–89 for the first time both authorized funding and set maximum program levels for all SBA programs through fiscal year 1979. Subsequent action in Public Law 96–302 and Public Law 97–35 set levels through fiscal year 1984.

It was recognized at the time the original funding levels were established for the three out years that adjustments might be necessary from time to time. The bill (H.R. 6086) provides necessary increases in three program levels.

(A) Small business investment companies (SBIC's)

SBIC's are privately-organized and managed companies which provide equity capital, long-term loans, and management assistance to small business concerns. Under the Small Business Investment Act of 1958 and regulations issued by the Small Business Administration, SBIC's are authorized to borrow from the Federal Government under a guarantee supplied by SBA. SBIC's pay the full cost of money to the Treasury plus a premium for these borrowings. Matching these Government funds with their private capital, SBIC's have financed almost 50,000 independent businesses by providing over $4 billion in equity capital and long-term credit.

SBIC's disbursed more dollars in calendar 1981 than ever before—almost one-third of a billion dollars. From a low of $123 million in 1975, SBIC's have been more active each year and the total of $333 million in 1981 represented an increase of 170 percent in 5 years.

A NASBIC-commissioned study by Arthur D. Little, Inc. and Deloitte, Haskins & Sells on the economic impact of SBIC financing on small businesses showed the average growth rate of SBIC portfolio companies was ten times greater than all American small businesses in terms of increased sales, employment, and profits. The study found further that the Federal Government received $110 in additional tax receipts for each $1 it spent to support the SBIC program, and that the cost to the Federal Government of creating a permanent new job through the SBIC program was only $312. The accounting firm calculated that SBIC's financed the creation of 147,730 new jobs in the ten years from 1970 through 1979.

Two additional statistics on SBIC's role to small business are revealing.

First: SBIC's allocate a large share of their dollars to startup financings. SBA data show that SBIC's put 41 percent of their disbursements in firms one year old or less in calendar 1981.

Second: A large percentage of SBIC dollars are disbursed in the form of equity-type or straight equity financings. In calendar 1981, 35 percent of the dollars went out as straight equity with another 32 percent in the form of debt with equity conversion features. For the first quarter of 1982, SBIC outlays were 41 percent in the form of straight equities (the highest ever) with another 32 percent of the dollars going for equity-type securities.

Based on the accelerated pace of SBIC disbursements, it is apparent the industry will seek an increased amount of borrowings,

("leverage") from SBA. Under present law, SBA will be able to guarantee only $160 million in leverage in fiscal 1983 and 1984. This would not sustain the present rate of investment.

The problem is compounded by the fact that almost $155 million in outstanding SBA leverage will mature in fiscal 1983 and another $86 million in fiscal 1984. Under Federal budget accounting procedures, the "rollover" or refinancing of these maturing debentures count as if they were new guarantees. Therefore, the present ceiling on fiscal 1983 leverage could be virtually exhausted merely by a rollover of maturing leverage, leaving no borrowing ability for new licensees or for those SBIC's which have not drawn down the dollars to which they are entitled by law.

If it appears that SBA will not able to fill the needs of eligible SBIC's for leverage, very few individuals or institutions will organize new SBIC's and very few existing SBIC's will increase their private capital. Obviously, this will adversely affect entrepreneurs seeking SBIC dollars to start new businesses and owners of smaller firms requiring venture capital to expand their companies to bring new products and new services to the American economy. The availability of adequate leverage is essential to the continued growth the SBIC industry.

(B) Economic opportunity loan guarantee levels

Pursuant to section 7(a)(11) of the Small Business Act, SBA is empowered to make or guarantee loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or which are owned by low-income individuals. These loans, commonly referred to as Economic Opportunity Loans (EOL's), have the same terms, maturities and restrictions on the use of proceeds as SBA's regular business loans.

The Administration has requested an EOL guarantee program level of $100 million in fiscal year 1982 and $176 million in each of fiscal years 1983 and 1984. The presently approved program level for EOL guarantees is $60 million in each of the three aforementioned years.

At first review of this request, the Committee failed to understand the rationale supporting the Administration's proposal. During the first six months of fiscal year 1982 only $4,378,000 of EOL guarantees were made. This is an annualized rate of less than $9 million, and the Administration's request is to increase this program level to $100 million *for this year.* Further, since the inception of the EOL program, it has never generated more than $25 million in activity during any one fiscal year, and yet your Committee is now requested to increase this program level to $167 million in each of the next two years.[1]

The concern of your Committee, however, relating to the motivation and rationale supporting these requested increases was somewhat dispelled by SBA at hearings which were recently held on this and related issues. At that hearing, SBA announced that it was about to undertake a new effort "with our regional administrators, with our banking partners and all involved in the system to improve our record in this area."

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[1] EOL guarantee loan activity fiscal year 1982: $14 million.

Your Committee is extremely anxious to review the details of this new initiative to implement a program of vital importance to this Nation's economically distressed areas. In order to further this purpose and provide the incentive for its expansion, the bill would grant the requested increases for fiscal years 1983 and 1984. Since fiscal year 1982 is more than half over and since over 92 percent of program authority is currently available, there is no need to raise the program level for this year.

Of course, if the SBA does not implement the new initiative it has promised in this area, your Committee would be constrained not only to reevaluate the EOL program levels for succeeding years but also to reevaluate the Administration's motivation for seeking program increases in the first place.

(C) Minority Enterprise Small Business Investment Companies (MESBIC's)

Minority Enterprise Small Business Investment Companies (MESBIC's) are SBIC's which specialize in providing equity funds, long-term loans, and management assistance to small business concerns owned by socially or economically disadvantaged persons. MESBIC's are governed by the small regulation as SBIC's, with some modifications.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered by cause of social or economic disadvantages.

Under the Small Business Investment Act of 1958, MESBIC's are eligible for up to four tiers of leveraging from the SBA on their invested private capital. This private/public sector partnership serves to maximize the pool of funds available for investment in the minority small business community.

In 1981 alone, MESBIC's invested $25.8 million of private capital, combined with $28.5 million of SBA leverage dollars sector. This amount provided for the financing of 742 businesses, whose total estimated revenue was $185.8 million. In addition, an estimated 3,749 jobs were created through 1981 MESBIC financing activity.

By the end of 1981, over $112 million in private capital had been invested in the MESBIC industry, nearly matching the government's contribution of $142 million. When capital attracted from other private sector "sources" by initial investments made by MESBIC's are taken into account, the private-public funds ratio jumps to 6:1.

The accomplishments and continuing contributions to the American economy of the MESBIC industry have been recognized and acknowledged by the Administration proposal for increased funding for the MESBIC program in its fiscal year 1983 budget. The Committee is in complete accord with this proposal.

(B) SPENDING LEVELS

Prior to October 1, 9177, the Small Business Act authorized the appropriation of such sums as were necessary to carry out the provisions and purposes of the Act; and the Small Business

Investment Act authorized the appropriation of specific cumulative dollar amounts to carry out the programs authorized by that act. Effective October 1, 1977, open-ended authorizations for programs and payments of salaries and expenses were sharply curtailed. H.R. 692 (P.L. 95-89) amended the Small Business Act to specifically authorize the dollar amount of program levels by fiscal year for fiscal years 1978 and 1979; to authorize the appropriation of the dollar amount needed to carry out the program levels specified; and to authorize the appropriation of amounts necessary to carry out Small Business Act programs for which specific dollar authorizations are not provided.

At that time, the Committee felt that more certainty in the way small business assistance was to be administered, coupled with effective oversight required these changes. The Committee continues to believe that three year authorizations are the proper approach, giving Congress, the Executive, and the small business community a clear indication of goals and priorities for a reasonable period of time. The Committee believes that this budgeting method is the only way to assure that the Congressional intent in the Small Business Act will be strictly adhered to by SBA. This practice was continued in Public Laws 96-302 and 97-305 which provide authorizations through fiscal year 1984.

Yet the events of recent months indicate that specific program authorization levels and appropriations may not alone provide assurance that congressionally-mandated objectives will be met. Specifically, the agency (sometimes at OMB's direction) has over this period adopted a series of administrative actions purposefully designed to lessen the demand for its programs below levels approved by Congress and the President. Indeed, it appears that a previous Administrator may have made an attempt to delay loan commitments.

For example, SBA's own records show that through the first six months of this year the agency has approved only $53 million in direct loans. Thus, approximately 40 percent of this year's direct loan program authorization is not being used.

At the Committee's April 28 hearing on H.R. 6086, SBA's new Administrator maintained that the low rate of loan making was due to a lack of demand. He recognized, however, that a problem exists, and said that he had already communicated with field offices to end any confusion. Obviously, that communication did not solve the problem. The Committee's action in this bill is designed to send a clear message that this cannot continue. However, the Committee also wishes to be clear that it does not wish to see a return to previous administration actions that:

1. Rewarded loan officers for the number of loans made, but not the quality of these loans.

2. Resulted in a program with repayments current for only 62 percent of the direct loan portfolio and 79 percent of the loan guarantee portfolio.

The Committee will continue to watch this situation quite closely.

Another uncertainty is the commitment of SBA to use the full amount of the guaranteed lending authority available through the Congressional authorization and appropriation process. Under ex-

isting law the statute specifies the maximum amount of loans and guarantee assistance which may be made available but does not require any minimum.

The uncertainty remains that SBA, by regulation, could reduce the ceilings on interest rates, on its guaranteed loans as it did last August.

Although this proposal was not implemented, such action could result in the majority of banks refusing to participate in the program. The Committee continues to believe this to be the case.

Another example of possible administrative action, whether intentional or not, which may result in program funds not being fully utilized, was brought to the Committee's attention by the MESBIC industry.

The Small Business Administraton reqires MESBIC's to adhere to certain requirements before becoming eligible for leverage funds. These include: filing a complete application; demonstrating a need for funds (65 percent of funds must be committed or invested), an examination once a year by the SBA Inspector General's office and meeting credit and regulatory criteria. Those investment companies that meet this criteria should be able to obtain leverage funds within thirty to sixty (30–60) days. Two problems have complicated the smooth processing of leverage applications:

(1) The Inspector General, as is required by law, is not able to examine all investment companies within a twelve month period. Delays in completing examinations have precipitated potentially damaging financing delays for the investment company; and

(2) When examinations are completed it has taken some MESBIC's as many as three to six (3–6) months to receive their examination letters.

These two problems have created a situation in which an investment company who applied for funds in fiscal year 1982 may not actually receive leverage until fiscal year 1983.

The Committee is also concerned about recent actions by SBA to curtail the surety bond guaranty program and the pollution control guarantees program. However, H.R. 6086 addresses these directly.

In summary, action is necessary to require SBA to refrain from administrative action which would make unavailable the amount made available by law and agreed to by the President and the Congress unless there is a lack of qualified applicants for assistance.

(C) POLLUTION CONTROL FINANCING

Congress recognized that small businesses, because of their generally limited credit history and the smaller size of their financing requirements, are often unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and nonproductive nature of required pollution control facilities are often more than small businesses can be expected to handle. Therefore Congress authorized SBA, commercial banks, and State authorities to make long-term, low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guaran-

tee of the small concern's obligation under a contract involving the facility.

Through this program, small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite Congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantees for tax-exempts.

The SBA Pollution Control Contract Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses thereby enabling them to comply with environmental requirements.

Since its inception, this SBA Guarantee Program has been a revenue raiser through the fee SBA levies on businesses using the guarantee. To date, the fee system has generated $25 million. Translated into program outputs, this means that the program is self-sustaining. It costs the Federal Government nothing and, more importantly, fosters economic activity throughout the country.

Unfortunately, the SBA and OMB have refused Congressional directives to heed that tax-exempt pollution contract guarantees are of vital importance to the survival of businesses. It is important to note that in many instances the small concern's net worth is exceeded by the costs of these pollution control facilities. A business that does not have the assets to use as collateral for a taxable loan will have to close its doors or be in non-compliance with environmental mandates. These alternatives are unacceptable. Therefore, the Committee must legislatively correct the misunderstanding of the purposes of the program.

This action also addresses the issues of certainty and continuity in SBA program administration. It will restore the program to the status it held prior to December 31, 1981. This program has been subjected to constant turmoil and uncertainty over the past year. Congress authorized $250 million for loan guarantees in fiscal year 1982. However, OMB determined unilaterally that only $50 million in such guarantees was necessary. Soon after this decision, OMB decided that $95 million would be necessary, but the issue of tax-exempts remained uncertain. Finally, OMB determined that $150 million would be allocated in fiscal year 1982, but the majority of the allocation would only be for projects involving taxable financings. These decisions led to a halt in program activity, because of the restrictions and uncertainty over program allocation. Congressional action is required to reinstate this program.

(D) SURETY BOND GUARANTEES

To restore certainty and continuity to another SBA program, the Committee is also forced to express its disapproval of the recent

regulatory action whereby SBA reduced the maximum allowable amount of guarantees made through its surety bond guarantee program.

Although the statutory maximum for such guarantee is $1 million, SBA on January 15 administratively lowered this limit to $250,000 or 125 percent of any previously guaranteed contract, whichever is less. This action was done without prior notice to or consultation with the Congress and has been defended by the agency as part of the administration's efforts to lower overall Federal guarantee activity.

During fiscal year 1982, Congress has approved a $1.2 billion program level for surety bond guarantees. The administration has requested that this be lowered to $1.08 billion, the same amount which they have proposed for fiscal year 1983. As a preliminary step in the fiscal year 1983 budget process, the Committee has recommended to the Budget Committee that sufficient guarantee authority be provided for a $1.296 billion program. This represents the 1982 level plus an 8 percent increase for inflation.

SBA's restrictions on the size of surety bond guarantees will create a hardship for many small contractors. The Committee, in addition to authorizing a program level sufficient to make such restrictions unnecessary, has determined further legislative action is necessary to avoid further uncertainty. This must be done despite the fact that on April 1, SBA eliminated the $250,000 cap and increased the percentage limitation from 125 percent to 200 percent.

Action is being taken to expressly prohibit SBA from limiting the maximum amount of a bond below the statutory limit and from utilizing a percentage increase limitation on surety bonding; that action does not, however, preclude SBA from evaluating each application on its merits and approving guarantees in lower amounts where the individual application should receive such treatment.

(E) GUARANTEED LOAN INTEREST RATES

Well over ninety percent of SBA's business lending activity is accomplished through guaranteed loan programs. Typically, these programs provide for a 90-percent guarantee on loans extended to small concerns by banks and other financial institutions. The statute provides that the interest rate charged by these lenders must be legal and reasonable "but shall not exceed a rate prescribed by the Administration." SBA, therefore, has used its general rulemaking authority to promulgate, from time to time, maximum allowable interest rates.

For the last several years, this maximum has been set at up to 2¼ percent over low New York prime on loans having a maturity of under seven years and up to low New York prime plus up to 2¾ percent for loans having a maturity of seven years or longer.

Within the last year, SBA published a proposed rule which, if made effective, would have eliminated the 2¾ percent "spread" over prime. As a result of this publication, your Committee received numerous complaints from the banking community. These institutions argued that elimination of the spread would reduce the yield on SBA guarantee loans to a point where they would no longer become an attractive bank investment. Since there are al-

ready ample investment opportunities competing for bank funds, there is little eccnomic incentive to participate in a government program which would yield a lower rate of return than available from these other types of investments. Many banks, therefore, asserted that they would abandon the SBA program if the proposed regulations were adopted.

While your Committee is, of course, deeply concerned about today's high interest rates and its devastating effects on small business, it does not believe the remedy to be reducing the interest rates on SBA guaranteed loans. While this may have some surface attraction, it would result in a far more serious problem—the unavailability of credit to small business.

Even though the proposed SBA regulation eliminating the spread has not been adopted, its promulgation alone has caused a "chilling effect" on bank participation in the guarantee program. Banks are hesitant to adopt internal procedures and spend the time, money, and effort to develop and process potential SBA guarantee applications when they have little or no assurance that the "rules of the game" will not be changed in mid-stream. To alleviate this concern and to provide the necessary assurance that some continuity will be preserved, it is necessary to legislatively freeze SBA's present interest rate maximum for at least one year.

Your Committee has not yet taken a position whether the present interest rate maximum is the most appropriate. However, SBA is presently exploring this issue. In its report to your Committee, it is expected that the Agency will report on: (1) Whether the interest rate should be the product of the free market without government regulating a maximum and, if so, what effect this would have on small business and the guarantee program; (2) whether some other base rate (rather than low New York prime) should be used; (3) whether participating banks should be given their option of selecting a base rate from several such rates approved by SBA; (4) what spread rates, if any, should be used and how such rates are determined; and (5) the efficacy of the presently allowed quarterly fluctuation period as contrasted with daily fluctuations.

Until these questions are answered, however, it is necessary to freeze the present maximum to preserve program continuity.

(F) RECORD OF APPLICANTS

In these times of economic chaos for small business knowledge of loan and assistance demand is more important than ever to the Congressional authorization process. While small business demand for assistance is uncertain, what the administration forced upon the small and minority business community is the last budget for fiscal year 1982 is known.

The Small Business section of the Budget Reconciliation bill, Public Law 97-35 provided a 32 percent reduction in SBA business lending for fiscal year 1982 and substantial increases in interest rates for both regular business loans and disaster loans. Interest rates for SBA direct business loans were raised to the cost of money to the Federal Government plus up to 1 percent.

The administration's newly-proposed 1983 budget has even further cuts in fiscal year 1982 and new cuts for fiscal year 1983.

The major changes proposed by the administration include:

In 1982, there would be even further reductions in guaranteed loan levels, surety bond guarantees and pollution control bond guarantees.

In 1983, there would be further reductions in guaranteed loan levels, surety bond guarantees and pollution control bond guarantees.

In 1983, there would be further reductions in guaranteed loan levels, and the elimination of direct regular business loans, an important source of capital to minority firms. Also to be eliminated: handicapped, economic opportunity, and solar and energy conservation direct loans.

Ancillary to the provisions in H.R. 6068 which would provide financing in the amount agreed upon in appropriations acts and signed into law by the President, unless there is a lack of qualified applicants, is the requirement to keep a record of inquiries regarding SBA assistance. This is in order that Congress might project demand more accurately. The Committee remains concerned that SBA whether on its own volition or due to OMB pressure, is arbitrarily indicating that no assistance is available.

SBA's own records show that, for example, through the first six months of fiscal year 1982 the agency approved only $53 million direct loans. Thus, approximately 40 percent of this year's direct loan program level is going unused.

SBA maintains that it is simply lack of demand and not their lack of action and points to a memo sent by Central Office to all of the District Offices advising them of the availability of more direct loan money if they need it.

SBA opposes the mandatory spending provision and this recordkeeping provision maintaining that they are already keeping these records. By the Chairman's request to transmit records for all inquiries received by any district or branch office on April 29, the Committee received records from approximately eighty offices. This transmittal clearly show that many of the offices are not maintaining these records. A comparison of the numbers shows a great disparity in recordkeeping. It appears that not all inquiries are recorded; the information which is recorded is often illegible and certainly is incomplete.

The Committee staff also contacted a number of district offices to ascertain the extent of their recordkeeping and the results are as follows:

1. Baltimore District Office did not ask for the name and address when one of our staff called and said he wanted an SBA direct loan; it did say that there was a nine-month waiting list and that if the inquirer would give his name and address, he would be sent an application when his name moved up on the waiting list.

2. A recording at the Los Angeles Office stated all personnel were busy but that direct loans were not available; an SBA employee who then answered the incoming call at the end of the recording again stated that they were not giving out any loans other than guaranteed loans.

3. Calling the general information number for the New York District Office resulted in a recording which states that SBA guaranteed loans are the primary means of financial assistance and that

although there is a limited budget for direct loans, the demand for these loans far exceeds the available funds.

4. Eight calls were made to the Phoenix District Office and names and addresses were given; only four of these eight names appears on the Phoenix list of inquiries:

5. At the Washington, D.C. District Office, an inquirer was told that there are one hundred and fifty pending applications for direct loans.

If the administration is to use the sophistical argument that less "current demand" should result in less program authority, then statistics on demand should at least be accurate and complete. The fact is that SBA does not now keep a record of applicants or those who inquire about SBA assistance and thus is never in a position to give a valid indication of program demand.

The SBA Administrator advised the Committee that additional information on loan applications and demand will be collected and provided to the Committee. However, since this is a policy which would be easily overturned by SBA or OMB, the Committee believes that legislation is needed to require SBA to keep a record of the names and addresses and amounts requested by loan applicants or those who inquire about the loan availability or funding.

(G) SMALL BUSINESS COMMITTEE NOTIFICATION

In furtherance of the Committee's oversight responsibilities under Rule X of the House of Representatives and in the interest of SBA program certainty and continuity, two procedural steps need to be implemented.

With respect to reprogramming requests that are deemed to be necessary, the Committee expects to follow closely the reprogramming procedures here outlined.

The Chairman of the Appropriations Subcommittee on the Department of State, Justice, and Commerce, the Judiciary, and Related Agencies, in addition to the Chairman of the House and Senate Small Business Committees will be notified in writing a minimum of 15 days prior to—

(1) Reprogramming of funds, whether permanent or temporary, in excesss of $250,000 or 10 percent, whichever is less, between programs or activities. This provision is also applicable in cases where several activities are involved with each receiving less than $250,000. In addition, notification of reprogramming actions which are less than these amounts is expected if such actions would have the effect of committing the agency to significant requirements in future years.

(3) Creation of new programs or substantial augmentation of existing programs.

(4) Relocation of offices or employees.

(5) Reorganization of offices, programs, or activities.

The Committee also expects that any items which are subject to interpretation will be reported.

Second, the Committee desires to be kept abreast of any agency internal reorganization as has been past practice and also any Executive Reorganization pursuant to 5 U.S.C. 902-912 which would affect the Small Business Administration. Legislation to extend the

President's reorganization authority hs now passed the Senate and is pending in the House.

Notwithstanding the fact that a reorganization plan is effective only after Congress has been in session sixty days without either House passing a resolution of disapproval, earlier attention to such a plan by authorizing Committees is necessary.

(H) PUBLICIZING PROCUREMENT ACTIONS

This Committee is charged with the responsibility to carry forward a policy embodied in the Small Business Act of 1953, "to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprise . . ." However, the small business share of Federal contracts continues to be inadequate. Total Federal contract dollars awarded to small business over the last ten years have grown at only a 1 percent average annual rate.

Congress has always insisted on small business participation in Government procurement because it improves and broadens the competitive base and the defense industrial base; provides innovative technology; lowers procurement costs; and disperses procurement funds industrially and geographically.

Therefore, the Chairman and Representative Ireland introduced H.R. 5551, legislation which will improve the small business community's access to Federal procurement information and increase contracting opportunities.

Section 8(e) of the Small Business Act requires that Federal contracting opportunities be published in the Commerce Business Daily. This supposedly insures maximum competition for Government contracts. The reality, however, is that small firms do not have sufficient time to prepare bids and participate in Government procurement. Improved contracting opportunities for small concerns will lead to greater competition and lower prices for the Government.

It is administrative practice to publish procurement notices in the Commerce Business Daily ten days before the issuance of a solicitation, but the practice is not constant, and a notice often first appears on the date a solicitation, is issued. In addition, regulations presently provide for a minimum bidding time of twenty calendar days except where "special circumstances" call for a shortened time period. Therefore, instead of a cumulative period of thirty days for solicitation and bid, you may find an arbitrarily imposed timeframe which exists solely at the procuring agency's discretion. The small firm is at a clear disadvantage since it often lacks the financial and human resources necessary to monitor this discretionary, fluctuating process.

The Committee decided it was necessary to amend the Small Business Act to require a procuring agency to give small businesses fifteen days from the appearance of a notice in the Commerce Business Daily to request copies of a solicitation. An additional thirty days from the issuance of the solicitation would be offered before bids are due. These forty-five days would afford small firms the time to monitor the publication and prepare a bid for proposal. Without creating additional costs for the Commerce Business Daily,

this will aid small firms in developing their capacity to do business with the Federal Government and will begin the process of simplification of contracting procedures.

(I) SIZE STANDARDS

Congress established a broad definition of small-business in the Small Business Act of 1953: "a small-business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition may use these criteria, among others: Numbers of employees and dollar volume of business . . ."

Establishing "size standards," i.e., the precise specification of "small," is delegated to the Administator of the SBA. The size standards determine a company's eligibility for SBA assistance, usually in the form of direct or guaranteed loans; management or technical assistance; or special set-aside programs for minorities, the handicapped or other economically disadvantaged entrepreneurs.

The existing standards have often been criticized as confusing and lacking a comprehensive, underlying logic. The complex rules often leave a business qualifying for some programs, but not others, because eligibility may vary from one program to another.

Changes to the size standards have been the center of controversy since 1979, when SBA officials decided the hodge-podge of rules needed revamping. If accomplished, the revisions will be the first major changes since the 1950's.

In March 1980, SBA proposed a revision to its size standards which was made inoperative by P.L. 96-481 which prohibited any size standard change until March 31, 1981.

In March 1980 proposed rulemaking, SBA officials decided to use a single measurement of size for the number of employees—with limits differing by industry—based on an assessment of competition.

Throughout this revision procedure SBA has maintained that promulgation of rules and regulations regarding size standards is not mandatory under the Administrative Procedure Act. But they have voluntarily brought themselves under the Act by regulation.

The safeguard is needed that any size standard changes be in accordance with the Administrative Procedure Act.

The long-expected next proposal was published on May 3, 1982, as a "Second Advance Notice of Proposed Rulemaking." The Committee wants to make sure that SBA continues to follow the APA in setting new size standards, i.e., publishing the notice of proposed rulemaking for extensive public comment. Full public participation and congressional scrutiny would thereby be assured.

(J) MESBIC FINANCING

Under the Small Business Investment Act of 1958, as amended, MESBIC's can receive up to four tiers of SBA leveraging on their "private capital." In an effort to promote the MESBIC industry, in its regulations the SBA allows for the inclusion of "nonprivate

funds" in its interpretation of private capital for leveraging purposes.

Based on this provision, public funds, accompanied by large amounts of private funds, were being invested in the MESBIC industry for several years. These private funds were largely dependent for their effectiveness on the leveragability of the public funds they complemented. By mid 1980, over $17 million in Government funds, in concert with over $10 million in private capital, had been invested in the MESBIC industry as a result of the public funds leverage regulation.

Then, in July 1980, public funds leveraging was suddenly halted by a decision of the Comptroller General. The decision claimed the leveraging of MESBIC's Federal funds to be illegal, except in the case of specific statutory language to the contrary. This decision was challenged and confirmed by a later Comptroller General's decision in January 1981. Thus, the potential utility of over $100 million, targeted to one of this Administration's highest priorities, the small business sector, has jeopardized.

The SBA's stance on this issue has been inconsistent and difficult to interpret. By delaying a formal reaction, it has incurred great costs to MESBIC's having public funds. In some cases public funds MESBIC's have been exposed to legal action taken by the business they had made commitments to based on their legitimate expectations of public funds leveraging.

Therefore, for those MESBIC's which prior to the GAO ruling had relied upon the use of public funds, legislation is necessary to clarify that the words "private capital," as used in section 303(c)(2)(iii) of the Small Business Investment Act of 1958, include not only capital which has been raised from private individuals, partnerships or corporations, but also, for purposes of leveraging, non-private or public funds such as, funds received from the Department of Housing and Urban Development, the Economic Development Administration, the Federal Railroad Administration of the Department of Transportation, and the Community Services Administration among others. This clarification is a one-time change and applies only to those MESBIC's which relied to their detriment on earlier policy.

(K) DEVELOPMENT COMPANY WORKING CAPITAL

At the present time small businesses cannot obtain working capital through development companies. This means they must go elsewhere or frequently suffer due to this lack of money.

The Committee recognizes that all small businesses need working capital and that a development company, with its full time professional employees, should be able to serve as a one-stop financial center.

Providing working capital makes the small business loan package more workable and makes the capital asset loan supplies by the development company more secure.

(L) SOURCE OF DEVELOPMENT COMPANY FUNDS

When Congress established the 503 Development Company Program in Public Law 96–302 certain requirements were set for pro-

gram eligibility. To qualify for this program, a development company must have: (1) A full-time professional staff with capability to package, process, close, and service its loans; (2) Professional management ability, including adequate accounting, legal and business-servicing abilities; (3) A board of directors or membership, which meets on a regular basis to make management decisions for the company including decisions relating to the making and servicing of loans by such company.

Income received by the development company through its assistance to small businesses cannot exceed that necessary to repay with interest the debentures it issues, to pay taxes and insurance, and to recover administrative costs.

These requirements resulted in a greater commitment of development companies to the small business community.

By statute, guarantees on behalf of development companies under section 503 may be used to provide funding only for up to one-half of project cost. SBA has chosen to refuse guarantees if the non-SBA half is partially or wholly funded by Industrial Revenue Bonds. This arbitrarily frustrates Congress' attempt to provide desperately needed capital to small concerns.

It is necessary to amend the Small Business Investment Act of 1958 to prohibit SBA from using the source or nature of the other funds as a criterion for eligibility.

(M) TECHNICAL AMENDMENTS

Two sets of technical amendments to the Small Business Act are necessary. P.L. 97-35, last year's reconsideration bill, did not update cross references to individual separate loan programs which were consolidated into section 7(a).

Also, corrections need to be made to technical errors regarding the disaster changes made by last year's reconciliation bill.

(N) LABOR SURPLUS AREA PROCUREMENT

The statutory authority creating a permanent labor surplus area procurement (LSA) program is found in section 15 of the Small Business Act. However, that section contains a number of technical errors which could be a potential source of confusion for program administrators. In addition, because of legislation passed subsequent in time to section 15, there is a question regarding the applicability of its provisions to all agencies of the Federal Government. There is a clear need, therefore, both to cure the technical deficiencies contained in present law and to dispel any ambiguity regarding the scope of this section's applicability.

(O) LIMITATION ON USE OF SBA LOANS

At the Committee's markup session on May 11, 1982, the Committee adopted an amendment to H.R. 6086 which would prohibit SBA to make or guarantee loans to potential borrowers involved in abortion or abortion related activities.

An exception would be made for applicants which perform or recommended abortion to save an endangered mother's life.

(P) LOAN RESTRICTIONS AND PRIORITIES

Pursuant to section 7(a) of the Small Business Act qualified small business concerns may obtain loans for certain specified purposes directly from the SBA. However, before a small firm may be extended such financial assistance it must demonstrate that the requested loan is not available from financial institutions and, further, that such credit would not be extended even with an SBA guarantee of the loan.

This program of direct lending to small business concerns has been the subject of criticism because of three principal reasons.

First, your Committee is in receipt of numerous complaints and charges that SBA has mismanaged the expenditure of direct loan funds. Present law does preclude SBA from extending *any* financial assistance unless there is a reasonable assurance of repayment. However, the statute does not specify the precise areas of scrutiny which should be made an integral part of the credit analysis. Further, nowhere in the law is there a requirement that SBA afford direct loan recipients priority use of the agency's management and technical ass stance programs. Your Committee is of the firm opinion that these considerations warrant the clear Congressional guidance found in this bill and that adherence to these newly imposed requirements will, over time, yield a loan program resulting in more benefit to small business and less loss to the government.

The second area of concern relates to the allocation of scarce resources. Since the amount of direct loan funds is extremely small compared with estimates of legitimate demand, your Committee has concluded that such funds should be used in a manner best calculated to yield the highest possible return to the taxpayer. In order to achieve this purpose, it is necessary that direct loans be positively correlated with job creation potential and, further, that the allocation of such funds to each SBA field office be based upon that area's need for economic stimulus as measured by the number of unemployed residing in that district.

Third, it is a concern of your Committee that Federal funds are "leveraged" to the extent practical with non-Federal resources. Matching loans provide an ideal opportunity to further this goal. By requiring the injection of non-Federal funds to accompany each direct loan, the SBA would achieve greater economy in the usage of this scarce resource and thereby be able to serve more small businesses. In addition, this proposed requirement would also have the effect of attracting more local capital for the benefit of our nation's small business community and promote the greater involvement of State and local governments in this effort. Your Committee firmly believes that legislation is, therefore, needed to meet these vital needs.

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CHAPTER 7.—FULL COMMITTEE ACTIVITIES

HEARINGS

Although Committee activities and hearings are divided into legislative and oversight areas, investigative matters are included within the oversight category and what begins as oversight/investigative frequently becomes legislative.

In an effort to keep the open line of communication for necessary legislation which the White House Conference established between the small business community and Congress, the Chairman began a series of quarterly meetings with the small business trade organizations. The meetings are proving to be an effective mechanism to bring the associations' direct presence to the Committee resulting in ideas for legislation, a feeling for the problems encountered in doing business with the Federal Government and reactions to the administration's tax changes. Most trade association representatives indicated that tax and credit problems are their top legislative priorities for the 97th Congress. More than 100 association officials from across the country attended these meetings. In the second meeting the Chairmen of the six House Small Business Subcommittees presented brief legislative reports.

Meetings have been held on February 23 and September 16, 1981. Field hearings were held in Los Angeles, July 7; Chicago, July 18; Phoenix, September 1, 1981; Atlanta, January 18; and Philadelphia, March 15, 1982, for those who could not travel to Washington to express their concerns. The Committee expects to continue these meetings to hear directly from small businesses and their representatives about the effects of current economic policies and about the problems they are encountering with the Federal Government.

The Committee's beginning schedule was monopolized by a series of hearings made necessary by the Reagan administration's budget request and program changes for the Small Business Administration, including a 32-percent reduction in loan guarantees and consolidation of previously categorical programs. (Hearings and markups were held March 12 and 18, June 2 and June 9, 1981.) These administration budget revisions affecting small business have required continuing investigations and hearings to date.

On April 7, 1981, the Committee held a hearing on the impact of the administration's economic, tax, and spending proposals on small business, and the Federal Reserve's future conduct of monetary policy.

In the last Congress the Committee conducted extensive hearings and issued a report on the effect that the Fed's policy has had on small business. High interest rates, while not considered in detail by delegates to the White House Conference on Small Business, have become a major factor in the dramatic increase in small business failures. Federal Reserve Board Vice Chairman Frederick

Schultz testified on the effect of Fed policy on the small business community. The Committee continued to address the problems of high interest rates and their effect on small business.

The Committee and the House Education and Labor Committee's Subcommittee on Labor Standards on April 29, 1981, held a joint hearing on "Economic Programs to Stimulate Employment in the Small Business Sector." The hearing explored ways in which wage subsidy incentives have worked in the past and how well suited they may be in the long term needs of American labor and industry. In addition, the effectiveness of these wage and subsidy programs compared to other employment and training programs proposed by the Reagan administration and the Congress were examined.

The Committee met on June 2 and 9, 1981, to consider the recommendations of the Subcommittee on SBA, SBIC Authority, Minority Enterprise and General Small Business Problems regarding H.R. 2998, the Loan Consolidation and Improvement Act of 1981.

The purpose of the bill is threefold—to comply with budget reconciliation requirements; to minimize its adverse impact; and to assist small business. This legislation was enacted as part of the First Session's reconciliation measure, Public Law 97-35.

At its meeting of June 9, 1981, the full Committee considered necessary reconciliation measures, business and disaster loan consolidation and assistance and technical amendments to the Equal Access to Justice Act (although in the bill as reported the latter was deleted in conference). On June 16, 1981, H.R. 2998, as amended, was reported (see House Report 97-150). The administration rejected H.R. 2998 in favor of the Gramm/Latta substitute in the omnibus reconciliation measure. For further action see Committee Legislation Enacted.

The series of five Committee field hearings this Congress, collectively known as "Small and Minority Business in the Decade of the 80's," examined the 1982 budget cuts which are having a considerable impact on many beneficial programs administered by SBA. In addition, new regulations on the 8(a) minority business development program and guaranteed loan interest rates proposed by SBA raise serious concerns about the future of these vital programs. In previous field hearings, the Committee heard from witnesses involved in these Federal Government programs and has gained valuable insight into problems faced by small and minority business owners. Bringing the Committee into the field to meet directly with small business entrepreneurs highlights the commitment that the Congress has toward a healthy, vibrant small business sector and follows up on the White House Conference delegates' recommendations.

The Committee continued oversight of the SBA's proposed major revision in size standards first announced during the 96th Congress. The second proposed rule defining what is small for purposes of Government assistance was published for comment on May 3, 1982. Comments were due on August 2, 1982, and the proposal, as amended, will again be published for comment before being finalized.

Extensive interest in SBA's Federal timber set-aside program resulted in a separate final regulation determining small business for purposes of this program.

Based on small business' particular needs for tax relief and the recommendations of the White House Conference on Small Business, the Chairman introduced H.R. 3930, the Small Business Tax Relief Act of 1981, to provide much needed tax relief to the small business community. A more extensive analysis of these two initiatives is included under the section on tax issues affecting small business.

Further Committee action on H.R. 1139, a bill to amend Title 38, United States Code, to establish a business loan program for disabled veterans and veterans of the Vietnam Era, and for other purposes, referred jointly with the Committee on Veterans' Affairs, became unnecessary upon enactment of Public Law 97-72 whose title III accomplishes this 1981 objective.

On March 2 and 9, 1982, the Committee considered the administration's SBA budget request. The Committee sharply differed with the administration's budget requests, particularly insofar as eliminating SBA's direct loans, reducing SBA's pollution control equipment contract guarantees, reducing the amount of guaranteed loan authority and the amount of surety bond guarantee authority.

As a result of this hearing, the Committee also proposed as the new direct loan program for small firms located in labor surplus areas. This proposal is now contained in H.R. 6068 as reported by the Committee and as passed the House June 8, 1982.

TAX ISSUES CONSIDERED BY THE SMALL BUSINESS COMMITTEE

In conjunction with the Subcommittee on Tax, Access to Equity Capital and Business Opportunities, the Committee received testimony from many witnesses and associations regarding changes in the tax code which would be of benefit to small businesses. The Committee, whenever possible, introduced and supported legislation implementing the recommendations of the delegates to the White House Conference on Small Business which was held in January 1980. Five of the top seven recommendations of the delegates were changes in the tax code, confirming small businesses' belief that tax reform is necessary to their growth and success.

The chairman introduced H.R. 3930, the Small Business Tax Relief Act of 1981, to provide much-needed tax relief to the small business community.

In a time of rising unemployment, high interest rates, and inflation, Congress should give special consideration to the problems of the small business community. This legislation addressed the broader needs of the small business community and was intended to: (1) Reduce corporate tax rates; (2) increase the amount of used equipment and machinery eligible for the investment tax credit; (3) increase the maximum number of shareholders in a subchapter S corporation from 15 to 25; (4) increase the estate tax exemption from approximately $175,000 to $300,000 and increase the gift tax exclusion from $3,000 per year to $10,000 per year.

The present corporation tax rate structure places a difficult tax burden on small businesses. Although a significant number of

small businesses conduct business in the form of a sole proprietorship or partnership, there are also many small businesses that use the corporate structure. Thus, the reduction of the corporate tax rates will benefit a significant number of these firms. There is currently a five-tiered corporate tax structure. That bill would establish a seven-tiered rate, in place of the present five tiers, and substantially reduce the tax burden on the first $200,000 of taxable income.

Many small businesses cannot afford to purchase new equipment and machinery and are forced to maintain a viable business with used equipment and machinery. This problem is compounded by the limit on the amount of used equipment and machinery eligible for the investment tax credit. This legislation, increasing the then-limit from $100,000 to $300,000, would benefit those small businesses that traditionally purchase used equipment. In addition, this provision enables the taxpayer to carryback and carryforward the amount of the investment made over the prescribed limit. Currently, section 48 of the Internal Revenue Code of 1954 unfairly discriminates against small business because only used equipment is subject to the limitation with respect to the 10-percent investment tax credit; new equipment is not limited. Moreover, the carryback and carryforward provisions are for taxpayers who purchase new equipment; however, no such provision exists for those who purchase used equipment or machinery. This legislation would eliminate this disparity between the purchasers of new and used equipment.

The present estate and gift tax provisions of the Internal Revenue Code inhibit the transfer of a family-owned small business from one generation to the next. This legislation, raising the then-estate-tax exemption from approximately $175,000 to $300,000, would provide relief for the family-owned small business. In some instances, the heirs of a family owned business are forced to sell the business in order to pay the estate and inheritance taxes. An increasing number of family-held small businesses are forced to sell their businesses to large firms, thereby contributing to the growing trend of monopolies and greater concentration of businesses which undermines our free enterprise system. Increasing the estate tax exemption to $300,000 will relieve some of the estate and inheritance tax burden on the heirs of a family-owned small business. H.R. 3930 also includes a provision to raise the gift tax exclusion from the then-limit of $3,000 to $10,000 per year. This would enable members of a family-owned small business to have a valuable planning tool which will relieve some of the burdens of our estate tax system.

The subchapter S corporation came into existence in 1958 and was designed to allow small corporations which are essentially partnerships to enjoy the corporate form of organization without being made subject to the possible tax disadvantages of a corporation.

The advantage of a subchapter S corporation is that it allows the shareholders to pay income taxes and utilize corporate losses as if they were a partnership. It is becoming increasingly difficult for small businesses to obtain adequate financing due to high interest rates and other market forces. This legislation, increasing the

maximum number of shareholders permitted to operate a subchapter S corporation from the then-limit of 15 to 25, would alleviate some of the shareholders' problems and increase the appeal of the subchapter S corporation. Consequently, this provision would enable shareholders to pool their resources while simultaneously allowing for a greater distribution of the risks associated with the operation of a small business.

Many important provisions of H.R. 3930 were incorporated into the final tax relief measure adopted by the Congress in the first session, the Economic Recovery Tax Act of 1981.

The Economic Recovery Tax Act of 1981 contains several provisions of special interest to the small business community ranging from a reduction of individual income tax rate to improved inventory accounting rules. Following is a brief outline of pertinent provisions of interest to small concerns.

1. *Individual Income Tax Rates Reduction*—A 5-percent reduction effective October 1, 1981, and additional 10-percent rate reductions on July 1, 1982, and July 1, 1983, giving a overall 25-percent reduction during a 33-month period. For those taxpayers who conduct business in the form of a sole proprietorship, partnership or subchapter S corporation, the rate reduction could result in substantial tax savings during the period. Also, beginning in 1985, the individual income tax brackets, the personal exemption and the zero bracket amount would be indexed to the consumer price index to offset the effects of inflation.

2. *Depreciation of Personal Property Used in a Trade or Business*—The main depreciation provision is generally referred to as "10-5-3," and enables a business to recover the cost of property in 15, 10, 5, or 3 years. The depreciation provisions also contain a direct expensing section which would permit the cost of property to be recovered by a single deduction for the year the property is placed in service. The bill would permit a taxpayer to expense a maximum of $5,000 in 1982 and 1983; $7,500 in 1984 and 1985; and $10,000 per year beginning in 1986. Taxpayers have the option to expense the maximum amount and to depreciate the remaining cost of the property by use of the "10-5-3" method.

3. *Investment Tax Credit*—An increase in the investment tax credit limit on used equipment from $100,000 to $125,000 in 1981 through 1984 and to $150,000 in 1985 and thereafter.

4. *Subchapter S Corporations*—An increase in the permissible number of subchapter S shareholders from 15 to 25 and permission for the creation of shareholder trusts under certain circumstances. This provision took effect January 1, 1982.

5. *Corporate Accumulated Earnings Credit*—An increase in the minimum accumulated earnings credit from $150,000 to $250,000, effective January 1, 1982.

6. *Business Inventory Rules*—Improvements in LIFO inventory rules to remove impediments to the use of LIFO by small business, effective January 1, 1982.

7. *Corporate Tax Reduction*—Reduction of the corporate tax rates for those corporations earning $50,000 or less as follows: Corporations earning from $0-$25,000 now paying 17 percent would pay 16 percent in 1982 and 15 percent in 1983; corporations earning from

$25,001 to $50,000 now paying 20 percent would pay 19 percent in 1982 and 18 percent in 1983.

8. *Estate and Gift Taxation*—An increase in the exemption from estate tax from $175,000 to $600,000 by 1987. A lowering of the maximum estate tax rates from 70 percent to 50 percent. An unlimited marital deduction provision which will mean that there will be no estate tax on bequests made to spouses. The gift tax exclusion has been increased from $3,000 to $10,000, effective January 1, 1982.

The recently enacted Tax Equity and Fiscal Responsibility Tax Act of 1982 will probably impact adversely on small business. Some of the provisions of this new law effect the cash flow of small businesses, while simultaneously increasing the administrative burdens of complying with the Internal Revenue Code. Small businesses will need more cash because the Internal Revenue Service will be collecting more revenue and expecting it to be paid quicker. The relevant provisions of the new law are as follows: [1]

"1. Medical expense deduction

"Under the Act, three changes are made in the itemized deduction for medical expenditures (sec. 213).

"First, the separate deduction for one-half of health insurance premiums up to $150 is eliminated. Second, the floor for deductible medical expenses is raised from 3 percent to 5 percent of adjusted gross income. These first two provisions are effective for taxable years beginning after December 31, 1982. Third, effective for taxable years beginning after December 31, 1983, the one-percent floor on deductibility of drug expenditures is eliminated. The only drug expenditures which will be eligible for the deduction will be expenditures for drugs which legally require a prescription or for insulin.

"2. Casualty loss deduction

"Under present law, individuals who itemize deductions may deduct unreimbursed losses of nonbusiness property resulting from fire, storm, shipwreck, or other casualty, or from theft (sec. 165). For any one casualty, the deduction is allowed only to the extent that the amount of the loss exceeds $100.

"Under the Act, nonbusiness casualty losses are deductible only to the extent total losses sustained during the year exceed 10 percent of adjusted gross income. As under present law, each casualty loss is eligible for deductibility only to the extent it exceeds $100.

"This provision applies to taxable years beginning after December 31, 1982, and to the taxpayer's last taxable year beginning before January 1, 1983, for a taxpayer who elects to take into account a disaster loss in such a taxable year.

"3. Corporate tax preferences

"Under present law, corporations must pay a minimum tax on certain tax preferences (sec. 56), in addition to the corporation's regular tax. The amount of the minimum tax is 15 percent of the

[1] Excerpt from publication entitled "The Tax Equity and Fiscal Responsibility Act of 1982," prepared by Joint Committee on Taxation, August 24, 1982.

corporation's tax preferences in excess of the greater of the regular income tax paid or $10,000.

"The tax preference items included in this base of the minimum tax for corporations are:

"(1) Accelerated depreciation on real property in excess of straight-line depreciation over the useful life or recovery period;

"(2) Amortization of certified pollution control facilities (the excess of 60-month amortization over depreciation otherwise allowable);

"(3) In the case of certain financial institutions, the excess of the bad debt deductions over the amount of those deductions computed on the basis of actual experience;

"(4) Percentage depletion in excess of the adjusted basis of the property;

"(5) $^{18}/_{46}$ of the corporation's net capital gain; and

"(6) Amortization of child care facilities (the excess of 60-month amortization over depreciation otherwise allowable).

"Cutback in certain preferences

"The Act provides for a 15-percent cutback in certain corporate tax preferences.

"The changes, which apply to all corporations other than subchapter S corporations, are as follows:

"(a) In the case of iron ore and coal (including lignite), 15 percent of the depletion otherwise allowable in excess of basis is not allowed as a deduction.

"(b) The bad debt reserve deduction is reduced by 15 percent of the amount by which the otherwise allowable deduction exceeds the amount which would have been allowable on the basis of actual experience.

"(c) In the case of a financial institution, 15 percent of the otherwise allowable interest deduction for debt incurred or continued to purchase tax-exempt obligations acquired after 1982 is disallowed.

"(d) The deemed dividend distribution by a domestic international sales corporation (DISC) to a corporate shareholder is increased by 15 percent, to 57½ percent of certain taxable income.

"(e) The amount treated as ordinary income on the sale of section 1250 property (real estate) by a corporation is increased by 15 percent of the additional amount which would be ordinary income if the property were subject to recapture under section 1245. Special rules apply to capital gain distributions of REITS.

"(f) 15 percent of the basis of pollution control facilities to which an election under section 169 applies is treated as if the election did not apply.,

"(g) In the case of an integrated oil company, 15 percent of the amount otherwise allowable as a deduction for intangible drilling costs under section 263(c) is capitalized to the oil, gas, or geothermal property and amortized over a 36-month period.

"(h) 15 percent of the deductions for mining exploration and development costs otherwise allowable under section 616(a) and

617 to a corporation are capitalized and treated as recovery property assigend to the 5-year class. ACRS deductions and the investment tax credit are made available. The deductions and the credit are subject to recapture in accordance with the usual recapture rules.

"(i) The preference for child care facilities is deleted.

"Only 71.6 percent of the items subject to a cutback will be treated as items of tax preference under the add-on minimum tax for corporations.

"Effective dates

"The provisions generally apply to taxable years beginning after December 31, 1982. However, the provision relating to deductions under secs. 263(c), 616, and 617 applies to expenditures made after that date; the provision relating to pollution control facilities applies to property placed in service after that date; the provision relating to section 1250 property applies to dispositions after that date; and the provision relating to depletion applies to taxable years beginning after December 31, 1983.

"4 Basis adjustment for investment tax credits

"Cost recovery deductions under present law are allowed for 100 percent of the cost of a depreciable asset, including property for which the regular, energy, or historic structure rehabilitation investment tax credits are allowed. Basis is reduced by the full amount of rehabilitation credits except that no basis reduction is required for the credit for qualified rehabilitation of historic structures. Lessors may elect to pass through investment credits to lessees, in which case lessees are treated as having purchased the asset for fair market value for purposes of computing the credit.

"Basis adjustment

"The Act provides that a taxpayer is required to reduce the basis of assets by 50 percent of the amount of regular, energy, and certified historic structure investment tax credits. This applies to credits claimed on qualified progress expenditures as well as on ordinary credits. A deduction also is allowed for one-half of unused credits in the year in which they expire. The reduction in basis is subject to recapture as ordinary income under the usual depreciation recapture rules (sec. 1245 and 1250). The basis adjustment is not taken into account in determining earnings and profits.

"Taxpayers are given an election under the Act with respect to the regular investment credit on recovery property to elect a 2-percentage point reduction in the credit. The election is made property-by-property. A taxpayer who makes this election does not have to make a basis adjustment. In the case of partnerships, the election is made at the partnership level.

"Treatment of lessees.

"When lessors elect to pass through the investment credit to lessees under section 48(d), the lessor does not have to make a basis adjustment. Instead, the lessee includes in income ratably over the ACRS recovery period for the property an amount equal to one-half of the credit allowable. Lessees are eligible to elect the 2-percent-

age point reduction for the regular investment credit, in which case they are not required to include this in income. If the credit is recaptured, the income inclusions will be adjusted, in accordance with Treasury regulations, to take account of the amount of the credit recaptured.

"Effective dates

"The provision applies to property placed in service after December 31, 1982, other than property (which is not public utility property, property subject to a safe-harbor lease, or a rehabilitated building) placed in service before January 1, 1986, for which a contract was entered into after August 13, 1981, and was binding on July 1, 1982, and at all times thereafter. For property placed in service after 1982 which is not covered by the transition rule, qualified progress expenditures and expenditures for property constructed by the taxpayer incurred before 1983 are not subject to the new rules.

"In the case of an integrated manufacturing facility where there were binding contracts, or where construction by the taxpayer was carried out with respect to more than 20 percent of the cost of the facility between August 13, 1981, and July 2, 1982, and where the on-site construction began before July 1, 1982, property eligible for the credit in the facility with qualify for the transition rule if the property is placed in service before January 1, 1986.

"The basis adjustment does not apply for rehabilitation of certified historic structures if there is a contract to rehabilitate the property which was entered into after December 31, 1980, and was binding on July 1, 1982, and at all times thereafter or if rehabilitation began between December 31, 1980, and July 1, 1986, as long as the building is placed in service before January 1, 1986. Rehabilitations of certified historic structures placed in service before July 1, 1984, are exempt if Securities and Exchange Commission filings and HUD Section 8 applications with respect to those structures were made before July 1, 1982.

"5. Investment tax credit limitation

"The investment tax credit earned by a taxpayer can be used under present law to reduce tax liability up to certain limits. Except for the energy tax credit, the limit for taxable years ending after 1982 is $25,000 plus 90 percent of the tax liability in excess of $25,000. Unused credits for a taxable year may be carried back to each of the 3 taxable years proceding the unused credit year, and then carried forward to each of the 15 following taxable years.

"Under the Act, the amount of income tax liability (in excess of $25,000) that may be offset by the investment tax credit (other than the energy tax credit) is reduced from 90 percent to 85 percent, effective for taxable years beginning after December 31, 1982.

"6. Accelerated depreciation—1985 and 1986

"For 1981–84, cost recovery schedules for equipment reflect the 150-percent declining balance method with a switch to the straight-line method. Under present law, the schedules would accelerate in 1985 to reflect the 175-percent declining balance method with a switch to the sum-of-the-year-digits method. In 1986, they would ac-

celerate further to reflect the 200-percent declining balance method with a switch to the sum-of-the-years-digits method.

"Under the Act, the 1985 and 1986 acceleration of depreciation schedules is repealed.

"7. Construction period interest and taxes

"Under present law, corporations other than personal holding companies and subchapter S corporations are permitted to deduct currently construction period interest and taxes. However, individuals, personal holding companies, and subchapter S corporations are required to capitalize construction period interest and taxes for the construction of real property other than low-income housing (sec. 189).

"Under the Act, all corporations are required to capitalize construction period interest and taxes for nonresidential real property.

"The Act applies to interest and taxes incurred in taxable years beginning after 1982 with respect to construction begun after 1982. The Act does not apply, however, to the Alaska Natural Gas Transportation System. In addition, the Act does not apply to the construction of hotels, motels, hospitals, or nursing homes if construction begins before 1984 pursuant to a written plan of the taxpayer existing on July 1, 1982, and if the taxpayer has requested in writing approval for construction from a governmental body.

"8. Accelerated corporate tax payments

"Under present law, corporations generally must pay 80 percent of the current year's tax liability in quarterly estimated tax payments during the taxable year (sec. 6655). A penalty for underpayment of estimated taxes is imposed unless the corporation meets certain exceptions based on prior year's tax liability, prior year's income, or annualized income. At each installment date, annualized income is projected from the actual taxable income earned by the end of the previous month (or quarter).

"Generally, a corporation must pay its final tax payment 2½ months after the end of the taxable year, but it may elect to pay only half of the unpaid tax on this date and the remaining half three months later.

"Under the Act, the amount of estimated tax payments required for all corporations is increased from 80 percent to 90 percent of current year's tax liability. (A corresponding change will be made in the exception based on annualized income.) The penalty for underpayment of estimated taxes is imposed at three quarters of the full rate on underpayments between 80 and 90 percent of the tax due, but only if the taxpayer makes estimated tax payments of at least 80 percent of the tax due.

"The full amount of the unpaid tax is due 2½ months after the end of a taxable year.

"Corporate taxpayers with seasonal income have a new rule governing estimated tax payments. These taxpayers may rely on the rule if, in the preceding three taxable years, taxable income for any period of 6 successive months averaged 70 percent or more of total income for the taxable year. Income is to be annualized by assuming that the income is earned, in the current year, in the same pattern as in the three preceding taxable years. This rule requires

that the tax be paid on the annualized income in the same seasonal pattern in which it is earned.

"The Treasury Department is directed to amend its regulations regarding the computation of taxable income for the period before the installment due date, and taxpayers may rely on these regulations in computing taxable income for a period of less than a full taxable year under the annualization and seasonal pattern of income exceptions to the underpayment penalty.

"The provisions apply to taxable years beginning after December 31, 1982.

"9. Targeted jobs credit

"The targeted jobs credit is available for hiring individuals from one or more of nine target groups (sec. 44B). The credit is equal to 50 percent of the first $6,000 of wages paid for the first year of employment, and 25 percent of the first $6,000 of wages paid for the second year of employment, to a target group individual. Under present law, the credit is available for wages paid to eligible individuals who begin work for the employer before 1983.

"The Act modifies the credit in several ways. First, the credit is made available with respect to any member of a targeted group who begins work on or before December 31, 1984.

"Second, a new targeted group is added, consisting of economically disadvantaged youths who are 16 or 17 years of age on the hiring date and who have not worked for the employer before the period for which the employer claims the credit. The credit for this group is 85 percent of up to $3,000 of wages paid for services attributable to any 90-day period between May 1 and September 15, effective for individuals beginning work for the employer after April 30, 1983.

"Third, recipients of noncash, as well as cash, general assistance payments are members of a targeted group.

"Fourth, the target group consisting of individuals involuntarily terminated from CETA jobs will be terminated for individuals who begin work for the employer after December 31, 1982.

"Fifth, appropriations of administrative funds are authorized for such sums as may be necessary in fiscal years 1983 and 1984.

"Sixth, the Secretary of Labor will be required to submit annual quality control reports to the Congress, reviewing the accuracy of the process by which the eligibility of individuals as members of targeted groups is determined.

"Seventh, certifications will be valid if requested or received on or before the day the individual begins work for the employer.

"10. Employer reporting with respect to tips

"Under present law, tipped employees must generally report all tips received in the course of their employment to their employer.

"In general, withholding for purposes of the Federal Insurance Contributions Act (FICA) tax and the income tax is required only to the extent tips are reported to the employer and only to the extent collection of the tax can be made by the employer from wages paid to the employee (excluding tips, but including funds turned over by the employee to the employer or under the control of the employer).

"Employees, whether or not they receive tips, are required to keep records to establish the amount of gross income and deductions. Employers are expressly required to retain only charge tip receipts and statements of tips received by employees furnished by such employees.

"Under the Act, the rules of present law relating to reporting of tips to employers by their employees and to the resulting withholding of FICA and income taxes is retained. However, each large food and beverage establishment is required to report annually to the Internal Revenue Service (1) the gross receipts of the establishment from food and beverage sales (other than receipts from carryout sales and mandatory 10-percent or more service charge sales), (2) the amount of aggregate charge receipts (other than receipts from carryout sales and 10-percent service charge sales), (3) the aggregate amount of tips shown on such charge receipts and (4) reported tip income and mandatory service charges of less than 10 percent.

"If the employees voluntarily report tips aggregating 8 percent or more of gross receipts (defined as gross receipts less carryout sales, less 10-percent service charge sales), then no tip allocations, will need to be made. However, if this 8-percent reporting threshold is not met, then the employer must allocate an amount equal to the difference between 8 percent of gross receipts and the amounts reported by employees for the year to all tipped employees pursuant to either an agreement between the employer and employees or in the absence of such an agreement according to regulations issued by the Secretary.

"A large food or beverage establishment is any establishment (public or private) the activity of which is the provision of food or beverages for consumption on the premises, other than of a "carryout" nature such as "fast food restaurants," with respect to which tipping is customary, and which normally employed more than 10 employees on a typical business day during the preceding calendar year.

"The Act requires the Secretary of the Treasury to submit, prior to January 1, 1987, to the tax-writing committees of the Congress a report on the operation of the present reporting system as applied to tips received as wages or compensation.

"These amendments generally apply to calendar years beginning after December 31, 1982, but the allocation rules will first apply to payroll periods ending after March 31, 1983.

"11. Independent contractors

"Treatment of real estate agents and direct sellers

"The Act provides that salespersons who are licensed real estate agents and individuals who are direct sellers will be treated, for Federal income and employment tax purposes, as self-employed persons (and not as employees) if substantially all their remuneration is directly related to sales or other output and their services are performed pursuant to a written contract providing that they will not be treated as employees for Federal tax purposes. The provision applies to services performed after 1982.

"Interim provisions relating to classification controversies

"Section 530 of the Revenue Act of 1978 provided that taxpayers who had a reasonable basis for not treating workers as employees in the past could continue such treatment without incurring employment tax liabilities. The provision expired on June 30, 1982.

"The Act indefinitely extends the interim provisions of section 530 of the Revenue Act of 1978 from July 1, 1982 until such time as the Congress enacts legislation concerning the classification of workers as independent contractors or employees.

"Certain employment tax liabilities

"If a worker reclassification occurs under present law, the employer generally is responsible for all employment tax liabilities (income tax withholding, both the employer's and employee's share of FICA taxes, and FUTA taxes) with respect to the reclassified worker.

"The Act provides that an employer will be liable for 1.5 percent of wages and 20 percent of the worker's share of FICA tax that should have been withheld if the employer erroneously treated the worker as a nonemployee for income tax and social security tax purposes. These amounts are doubled if no information returns are filed. The reduced liability does not apply if the employer treats a worker as a nonemployee with intentional disregard of the law. The provision is effective on enactment, but does not apply to assessments made before January 1, 1983."

PROCUREMENT

(A) Prompt Payment Act, Public Law 97-177

The Federal Government processes 30 million invoices each year from roughly 75,000 individual contractors. Approximately 90 percent of the primary commercial products and services procured by the Federal Government are purchased from small dealers, distributors, manufacturers, and service-related firms.

Small businesses maintain competition in the market place by accepting smaller profit margins than large firms and be employing new technologies and procedures that increase productivity and, therefore, lower costs. If a sufficient number of small firms forego conducting business with the Federal Government, Federal procurement costs for goods and services will increase, ultimately at the expense of the American taxpaying public.

Before passage of Public Law 97-177, there was no statutory mandate requiring that the Federal Government pay its bills on time. While accepted commercial practice calls for payment within 30 days of invoice receipt, or the imposition of an interest penalty, the Federal Government has not always conformed to this standard.

The Prompt Payment Act, signed into law May 21, 1982, requires that Federal agencies pay interest on overdue payments to businesses for property or services. To assist the Government in avoiding interest payments, the act requires that Government contracts stipulate a payment due date. If a contract lacks such a date, the 30-day commercial standard will apply, except for meats and per-

ishable fruits and vegetables (which are already subject to a shorter period by statute). The rate of interest is to be pegged to that determined by the Secretary of the Treasury for payment under section 12 of the Contract Disputes Act. An agency must pay any interest penalty from the appropriation for its operating funds. An agency may take advantage of an early payment discount only if payment is made within the time specified by the business. Each agency must report annually to Congress concerning any interest payments incurred.

While the Prompt Payment Act was not reported by the House Small Business Committee, this Committee has had similar legislation before it (H.R. 3474 and H.R. 5075). Many times small concerns have testified before the Committee about the Government's tardy payment practices. Further, many members of this Committee were cosponsors of bills on this subject, and all supported passage of the bill, H.R. 4709, when it reached the House floor.

The Committee believes that enactment of H.R. 4709 is a positive step indicating to the small business community a determination to put the U.S. Government on a businesslike basis. Paying bills on time, and paying penalties on overdue accounts, are common business practices which the Federal Government should adopt.

(B) Retainage

In response to the beleaguered contracting industry, the Chairman introduced H.R. 5022, to eliminate retainage for small business concerns on Federal Government contracts.

Retainage is the practice of withholding a percentage of the contractor's earned payment pending satisfactory completion of all required contractual work. Generally, when contractual work is performed for the Federal Government, the Government retains a portion of the prime contractor's payment and the prime contractor, in turn, retains a portion of its subcontractors' payment. Amounts to be retained are withheld from progress payments made periodically to the contractor by the procuring agency as work progresses on the contract. Present regulations provide that there shall be retained 10 percent of the estimated amount of such progress payments until final completion and acceptance of the contract work. However, the contracting officer has discretionary authority in this matter.

Under provisions of H.R. 5022, when authorized, no retainage is to be withheld from payments made for satisfactory contract progress; in addition, no retainage whatsoever is to be withheld from progress payments to small concerns which have furnished an adequate performance bond, as determined by the contracting officer.

Testifying at the May 5, 1982, hearing in favor of H.R. 5022 were national associations representing hundreds of thousands of members employing millions of Americans.

This hearing clearly establishes that the practice of retainage in today's business climate has outlived its usefulness, is a deterrent to vigorous competition in the construction industry, and causes unnecessary costs to Government. There are many reasons for ending this outmoded practice.

Retainage, in effect, is antithetical to the established Government policy of providing small businesses with necessary financing

if they are otherwise qualified to perform Government contracts. The need for financial assistance should not be construed as a handicap to any contractor, if the contractor is otherwise reliable, competent, and responsible.

Enactment of the Small Business Contract Payment Procedures Act would put more than $4 billion directly into the hands of the private sector, available for business growth and job creation.

Because the administration's proposal for a Uniform Procurement System does not deal directly with the retainage question and could not be enacted this Congress, it was hoped that the House Government Operations Committee would take immediate action to hold hearings and report legislation to assist small concerns in overcoming the retainage problem. This was not done. However, the Senate passed its version of this legislation, S. 1782, on October 1, 1982. No further action was taken in the 97th Congress.

(C) Uniform Federal procurement system

Public Law 96-83 ("The Office of Federal Procurement Policy Act Amendments of 1979"), requires that OFPP develop a comprehensive and uniform procurement system for use by Federal agencies. On October 30, 1981, OFPP provided Congress its first proposal for a procurement system, a procurement management system as well as draft model procurement legislation.

On April 30, 1982, the administration transmitted its final proposal in the form of three draft bills, none of which has yet been introduced. These three bills, along with Executive Order 12352 issued by President Reagan on March 17, are the administration's comprehensive program for procurement reform.

Legislation which contained some administration procurement initiatives developed as part of the OFPP effort, S. 2127 the "Competition in Contracting Act of 1982", was reported by the Senate Committee on Governmental Affairs on November 15, 1982 (S. Rpt. 97-665). However, no further action was taken in the 97th Congress.

In its hearings and in meetings with OFPP and small business groups, the Committee has always stressed that the Congress must keep in mind certain specific problems during any consideration of model procurement legislation. These include: (1) The disappointing performance of the Federal agencies in expanding the opportunities for small business, evidenced by the small business share of Federal procurement showing no appreciable growth in recent years; (2) how bid sets and specifications were very often unavailable to small businesses despite the enactment of Public Law 95-507 which mandates their availability; (3) how inadequate time is allowed from the time of publication of bid notice to bid opening date; (4) the increasing number of sole source procurements; (5) how small businesses are often excluded from bidding for Government contracts due to the lack of specifications and data which the Government owns but has failed to obtain from the original contractors; (6) how Government change orders and design errors impose unnecessary and often devastating financial hardships upon small business; (7) how agency requirements for bidder "prequalification" are increasingly utilized to discriminate against small business; (8) late payment on Government contracts; (9) the practice of

retainage; (10) Research and Development set-asides; and (11) pre-award survey and audits being too costly for Government and small concerns.

The Committee will closely monitor the proposed laws and regulations for the new Federal Procurement System on behalf of its small business constituency.

(D) Department of Defense small business policies

The Committee challenged a policy gaining momentum in the Department of Defense which would have excluded small and disadvantaged businesses from competing for Defense base service contracts.

On March 12, 1982, Chairman Mitchell wrote Deputy Secretary of Defense Frank Carlucci about the increasing use of single, multi-function "umbrella" base support contracts questioning DoD's move to consolidate base support services into a single contract which only the largest firms are capable of performing. The result feared is that small and small disadvantaged businesses will be squeezed out by a few large firms, with a further erosion of competition for service contracts. Congressman Joseph P. Addabbo, a member of the Committee, also wrote the individual services in opposition to the use of umbrella contracts.

As a result, DoD reversed direction and decided that future solicitations, unless there are overriding national security considerations, will be packaged so as not to preclude performance by small and small disadvantaged concerns as prime contractors. This action, if implemented adequately by the individual services, should assure small and minority firms that they will receive a fair share of Federal service contract work.

Regular 8(a) program

During the 97th Congress, the Committee has been concerned about the lack of opportunity for minority firms in the section 8(a) Procurement Program.

Public Law 96-481, approved October 21, 1980, contains certain provisions which require SBA to establish a fixed period of time for every participant concerned, either to enter or remain in the section 8(a) program. Specifically, this legislation requires current participants in the program and new applicants to submit a business plan listing targets and objectives aimed at correcting the economic impairment which, in part, qualified the firm for the program, and a date for graduation from the program. The legislation further provided that the graduation date be fixed by SBA after negotiation with the program participant, that the date could be extended by SBA upon request of the 8(a) contractor, and that the date for existing 8(a) concerns would be fixed no later than April 21, 1982.

Although SBA has issued regulations implementing this legislation and has met the statutory deadline for establishing fixed program termination dates for existing participants, the Committee is very concerned about the inaction at SBA in response to recent 8(a) program size rulings made by the General Accounting Office and the Federal Courts. SBA's inaction may result in certain 8(a) firms in the program being denied contracts because they have grown

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larger prior to their projected graduation date. Both this Committee and the House Committee on Appropriations are concerned that SBA is unfairly counting the gross receipts or employment attributable to 8(a) contracts, and terminating a firm for being "other than small" based on that determination. Since 8(a) contracts are sources of temporary and remedial assistance, and since a firm terminated for being large will not receive such assistance, the firm will automatically become small as soon as it is terminated, and will suffer from many of the problems that were the basis for its initial admission into the program. Accordingly, SBA should develop economic criteria of competitive viability against which an 8(a) firms' progress or lack of progress can be based. In addition, any determination that an 8(a) firm is "other than small" ought not be based, in full or in part, on gross receipts or employment attributable to 8(a) contracts.

On August 17, 1982, the SBA published in the Federal Register an Interim Emergency Rule providing an alternative size standard for 8(a) firms. Since the emergency rule will, by its terms, expire in 180 days, the basic problem of how to measure the size a firm participating in the program is likely to repeat itself in the future.

The Committee's intensive investigation of the 8(a) program resulted in the issuance of an investigative report entitled "Minority Business Development Efforts of the Small Business Administration" (H. Rept. 97-956). In addition to the 8(a) program the investigative report also addresses the small and small disadvantaged business subcontracting program mandated by Public Law 95-507.

This report contains detailed recommendations for both administrative and legislative action needed to insure the proper functioning of these two program efforts. Agency responses to the Committee's recommendations are due by mid-February 1983.

CHAPTER 8.—INVESTIGATIONS OF MEAT MARKETING AND FOOD MANUFACTURING INDUSTRIES

(1) STAFF REPORT ON THE SYSTEMATIC DOWNWARD BIAS IN LIVE CATTLE FUTURES

In order to provide information on the role of commodity futures trading and its effects on small business, the Committee staff conducted an analysis of large (reporting) trader data, provided upon Committee request in accordance with section 8(e) of the Commodity Exchange Act by the Commodity Futures Trading Commission, for the live and feeder cattle futures markets of the Chicago Mercantile Exchange.

In accordance with section 8(a) of the Commodity Exchange Act, the staff report presented the results of the analysis in a form which did not reveal information about individual traders.

The report came to the following conclusions and recommendations:

A systematic trading technique which predicts certain live cattle futures price drops with 100-percent accuracy was discovered. This phenomenon means there is a large amount of short selling (relative to buying) entering the marketplace on a reoccurring, predictable basis. Available evidence indicates such short selling is generally coming from commercial feedlots, grain companies which own or have an interest in commercial feedlots, officers of these companies, officers of futures commission merchants and certain large farmers and speculators. The technique's predictive success implies that some cattle futures traders are aware of and taking advantage of the phenomenon discussed in this report. Since such knowledge can be used to profit from futures transactions to the obvious disadvantage of traders not in possession of this knowledge, it was recommended that the contents of the report be made public.

Based on the economic theory of efficient markets, the existence of the phenomenon described in the report provides strong evidence that the live cattle futures market is not operating as an efficient price discovery mechanism and that this market is operating with a systematic downward bias. Such a conclusion means the live cattle futures market and is not fulfilling its economic purpose of providing a hedging vehicle (equally) to all traders.

Evidence indicated that the predictable drops in live cattle futures prices are not reflective of fundamental supply-demand.

As a hedging mechanism, the live cattle futures market is providing hedging opportunities only to those cattle feeders with the lowest per unit costs [1] and not to cattle feeders in general.

A group of 32 large traders with correlated daily net trading activity and/or common business affiliations is a major force in the

[1] Generally, these are lots feeding in excess of 30,000 head per year.

live (and feeder) cattle futures market and this group displayed a net daily trading pattern indicative of knowledge of the observed bias in prices.

Making the results of the report public should result in live cattle futures traders arbitraging the observed phenomenon out of existence. To the extent this occurs, the live cattle futures market would not only not offer hedging opportunities to Corn Belt cattle feeders [2] but also not offer hedging opportunities to large (least cost) commercial cattle feeders. In such an environment, the live cattle futures market would serve no economic purpose.

Legislation

As a result of Committee studies of the live cattle futures market, Congressman Neal Smith introduced legislation (H.R. 5917) to deal with documented problems in cattle futures. The bill, which awaits action before the Committee on Agriculture, requires a producer referendum as a condition of designation of cattle futures markets.

Other legislation dealing with agriculture marketing problems included: H.R. 5956 to amend the Commodity Exchange Act to require public disclosure of grain export sales, by Congressman Neal Smith, referred to the Committee on Agriculture and passed by the House on September 23, 1982 as an amendment to H.R. 5447, Futures Trading Act of 1982, but deleted by the House-Senate Conference Committee on December 9, 1982. H.R. 626 to repeal the 1976 official standards for grades of carcass beef, by Congressman Neal Smith, referred to the Committee on Agriculture which took no action; H.R. 630 to clarify the eligibility of certain small businesses for loans under the Small Business Act, and to aid, protect, and preserve small businesses in meat production and marketing, by Congressman Neal Smith, referred jointly to the Committees on Agriculture and Small Business, which took no action; and H.R. 631 to amend the Small Business Act to assist and protect small businesses against unreasonable use of economic power by major meatpacking companies, by Congressman Neal Smith, referred jointly to the Committees on Agriculture and Small Business, which took no action.

(2) COMMITTEE STUDY OF FOOD MANUFACTURING INDUSTRIES

Under the direction of Chairman Mitchell, the Committee staff began an analysis of food manufacturing industries in the United States. The study will determine trends in the structure of these industries and the relative importance of small and large companies as well as isolating critical factors affecting the ability of small companies to survive and compete effectively.

The extent to which national brand food manufacturers are also engaged in the manufacture of private, controlled, and generic

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[2] See "An Assessment of the Performance of the Chicago Mercantile Exchange Live Cattle Contract as a Hedging Vehicle for Cattle Feeders," staff study, Committee on Small Business, U.S. House of Representatives, 96th Congress, 2d Session.

label products, the trends in this regard, and the impact of "dual branding" on competition in food manufacturing will be investigated. The results of this analysis are expected during the 98th Congress.

CHAPTER 9.—SUMMARY OF SUBCOMMITTEE ACTIVITIES

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

The Subcommittee held a hearing on April 7, 1981, on the administration's proposed changes in SBA lending authority: H.R. 2998, the Loan Consolidation and Improvement Act of 1981. The bill was marked up on May 19, 1981.

An amended bill was reported unanimously from the Subcommittee on May 20th. As reported, the bill consolidated several categorical programs into the regular 7(a) business loan program, provided new terms for 7(a) business loans, authorized new funding levels for fiscal year 1983 and fiscal year 1984 and required SBA to compile information for the Congress on the default rate of business loans, refinancing, and extensions.

The Subcommittee began a series of hearings on the Small Business Administration's section 8(a) Procurement Program for small and disadvantaged businesses on May 21, 1981. Subsequent hearings were held on June 4 and June 10, 1981. The hearings were held to examine new SBA policies on 8(a) program size standards and certification requirements and the agency's new interim and proposed program regulations.

At the first hearing SBA's Administrator Michael Cardenas emphasized the Administration's support for the 8(a) program despite new regulations issued which would dramatically curtail participation by minority businesses, and pending legislation to terminate the program.

The second hearing on the program brought together 8(a) contractors and trade associations testifying in support of the business development program. These hearings highlighted all aspects of the program so that it can be strengthened to better serve the minority business community.

The Subcommittee held a hearing on June 3, 1981, on H.R. 2997, and on SBA's disaster loan program. The Administration had proposed extensive changes in the disaster loan programs including restrictions on home disaster lending to persons who could not obtain credit elsewhere. Substantially higher interest rates were also proposed. Prior to the hearing, business disaster lending had already been administratively limited to 60 percent of actual net loss and only to firms unable to obtain credit elsewhere. Nonphysical disaster loans were to be eliminated under the Administration's proposal.

The Subcommittee reviewed legislation extending SBA's 8(a) Pilot Procurement Program through September 1983 at a September 22, 1981 hearing.

On September 28, 1981, the Subcommittee met to consider H.R. 4500, legislation to extend both the SBA/Army 8(a) Pilot Procure-

ment Program and the SBA Surety Bond Waiver Program through September 30, 1983. Both administration and public witnesses participated. The 8(a) Army-Pilot Program was enacted as a part of Public Law 95-507 and is designed to provide assistance to economically and socially disadvantaged small businesses in high technology fields. The procurement contracts for these SBA-certified businesses are to be specialized technological, manufacturing, and construction areas.

Subsequent consideration was at the full Committee level. The bill was marked up and ordered reported on October 6, 1981 (H. Rept. 97-304).

On November 12, 1981, the Subcommittee held a hearing on the Department of Interior's regulatory enforcement of affirmative action for minority businesses in outer continental shelf leasing activities. Subsequently, the Department indicated that affirmative action regulations of OCS leasing activities would be forthcoming.

On September 23, 1981, the Subcommittee began a series of hearings to determine if local small and minority businesses ought to be a part of the cable television dialog, particularly in large urban areas. Also, the Subcommittee sought to determine if local small and minority businesses are being involved in the cable television industry and whether or not they are getting a fair share of contract and subcontracting opportunities.

During the Subcommittee's previous hearings, it was noted that increased concentration in media ownership due to the high financial cost of developing cable television has precluded many small and minority businesses from successfully entering the field.

There are more than 13 million small and minority businesses in this country. Many of these are in franchising operations. Cable television is a franchise business. Based on the findings of the September 23d hearing, the Subcommittee held an additional hearing on October 13, 1981, to determine if local small and minority firms are getting the opportunities to share in the ownership, service, and construction of cable television systems in cities such as Washington, D.C.; Detroit; Philadelphia; New York; Chicago; Cleveland; Los Angeles; St. Louis; etc.

The third and final hearing on November 4, 1981, was to determine if large majority cable systems can provide better cable services than the local independent small or minority-owned cable operator. Additionally, the Subcommittee's hearing was to determine how the more than 13 million local independent small and minority businesses in this country could be included in ownership, construction, and servicing of local cable TV systems. The resultant committee report, with recommendations, is H. Rept. No. 97-976.

On February 25, 1982, the Subcommittee held hearings on the Reagan budget request for SBA for fiscal year 1983.

Hearings focused on why the small business community is experiencing one of its most drastic down cycles. In 1981 there were 17,000 business failures, the second highest level since World War II. The number of business failures for the first six weeks of 1982 was 2,560. If this failure rate continues through 1982, there will be approximately 22,000 failures by year's end. The highest number of business failures ever recorded by Dun & Bradstreet was 31,822 in 1932. While small business owners are hoping for an early upturn

in the economy, a continuing high deficit and prime interest rate are rapidly dimming such hope.

The administration's request was found to be counterproductive to the needs of the small business community. The administration should be providing more loan and management assistance, not less. Under the administration's proposal, the direct loan program would be eliminated and the guaranteed lending authority would be decreased to a level of $2.4 billion.

Other programs would be similarly reduced, with surety bond guarantees cut 23 percent from the currently authorized level and pollution control bond guarantees reduced 40 percent from their current level.

Minority business programs would also be cut. Although the administration has included $410 million in guaranteed loan authority for minorities, banks are simply unwilling to obligate this much to minority firms. They have never done so and will not do so in these hard economic times.

On April 28 and 29, 1982, the Subcommittee held hearings on two bills: H.R. 5551, which basically would require a 45-day lead time for Federal procurements between publication of notice of a pending procurement and issuance of the contract; and H.R. 6086, an omnibus bill which changes certain SBA program levels, requires that SBA fully utilize its programs and keep a record of applicants, prohibits SBA from refusing to issue guarantees on pollution bonds simply because the project involves an industrial revenue bond, prohibits SBA from arbitrarily refusing to approve surety bond guarantees on contracts eligible under statutory provisions, codifies existing regulations on interest rates on guaranteed loans, and requires the Small Business Administration to follow the Administrative Procedure Act if it revises its size standards. In addition, H.R. 6086 would direct the limited amount of direct loans to areas of high unemployment.

These two bills and other pending SBA and SBIC legislative authorizations were combined into the second omnibus bill of this Congress, H.R. 6086, and forwarded to the full Committee, which subsequently reported the measure (H. Rept. 97–564).

On June 16, 1982, the Subcommittee held a hearing on the administration's Small and Minority Enterprise Development Programs. This hearing focused on the Small Business Administration's 8(a) business development program and its small business subcontracting procurement programs. Programs at the Department of Commerce's Minority Business Development Agency were also examined.

The hearing examined concerns that, notwithstanding the vast contribution small and minority businesses are making to this economy, the Administration, under the guise of budgetary restraints and program efficiency, is moving in a direction that is counterproductive to the needs of the small and minority business concern.

The hearing gave the new leadership of SBA under Administrator Sanders an opportunity to put forward its position on necessary assistance for the small and minority business community.

Finally, the Minority Business Development Agency (MBDA), which has a key role to play in assisting minority businesses to

penetrate financial and contracting market areas, was also present to explain its new policy direction to achieve these goals.

The hearing gave direction to MBDA and SBA as to the right course in their agency missions to promote the growth and viability of the small and minority business community.

On May 5, 1982, the Subcommittee held a hearing on the problem of retainage in Federal procurement. The Chairman introduced legislation, H.R. 5022, to eliminate retainage for small business concerns on Federal Government contracts.

Retainage is the practice of withholding a percentage of the contractor's earned payment pending satisfactory completion of all required contractual work. Generally, when contractual work is performed for the Federal Government, the Government retains a portion of the prime contractor's payment and the prime contractor, in turn, retains a portion of its subcontractor's payment. Amounts to be retained are withheld from progress payments made periodically to the contractor by the procuring agency as work progresses on the contract.

Under provisions of H.R. 5022, when authorized, no retainage is to be withheld from payments made for satisfactory contract progress; in addition, no retainage whatsoever is to be withheld from progress payments to small concerns which have furnished an adequate performance bond, as determined by the contracting officer.

Testifying in favor of H.R. 5022 at the May 5 hearing were national associations representing hundreds of thousands of members employing millions of Americans.

This hearing clearly established that the practice of retainage in today's business climate has outlived its usefulness, is a deterrent to vigorous competition in the construction industry and causes unnecessary costs to Government.

The Subcommittee held a hearing on Economic Dislocation Legislation and the Peso Devaluation Crisis on September 29, 1982, at Washington, D.C. This hearing examined the very serious impact of this fall's peso devaluation crisis on small businesses along the Mexican-American border and the legislation to counter this difficult economic dislocation. (H.R. 7022, H.R. 7070, and H.R. 7160.) As part of the 1981 Reconciliation Act, SBA's 7(b)(9) economic dislocation loan program was abolished. The hearing examined legislation that would reinstate that economic dislocation loan program. The sponsors of this legisltion and the Small Business Administrator testified. The hearing followed two weeks after the Chairman instructed Committee staff to survey U.S. cities and towns in Texas bordering along Mexico to examine the impact on American small businesses of the Mexican government's currency devaluation and restrictions. Affected businesses, bankers and state and local officials testified as to the severity of the situation.

On September 1st, the Mexican government nationalized its banks and announced a general plan of exchange controls designed to block the flight of hard currency from the country. There followed a series of unpredictable and contradictory actions which have totally confused Mexican-American commerce. As a result Mexicans have not had dollars to pay accounts receivable at U.S. merchants or to buy U.S. goods.

On August 31st, the Small Business Administration announced that it had devised "A special $200 million 'Peso Pack' to aid American small businessmen along the U.S.-Mexican border during Mexico's present currency crisis." This "$200 million" program actually is comprised of only the $167 million in direct and guaranteed loan authority available during the balance of fiscal year 1982 under SBA's 7(a) loan program in the Dallas and San Francisco regions (These two regions serve eight states plus Guam.). Of this $167 million, $21 million is available in direct loans and $146 million in loan guarantees. "Peso Pack" is not a new loan program; the agency is merely using part of the regular business loan program to assist with this problem, although their announcements do not so state, with the interest rate being 14½ percent for direct loans and 15 to 16 percent for guaranteed loans.

After the hearing in Washington the staff extended its survey to border communities in California. On November 8, 1982, in San Diego, California, the Committee heard from local public officials and business owners from Calexico, El Centro, San Ysidro, and National City, California. Also testifying were representatives from both the executive and legislative branches of the State of California and from the City of San Diego.

On November 23, 1982, the Subcommittee held a hearing in San Francisco, California, on venture capital opportunities. Small businesses in that area, testified as to the availability of venture capital, particularly through the programs administered by the Small Business Administration. The Small Business Investment Act of 1958 authorizes SBA to license private companies, called Small Business Investment Companies, whose sole purpose is to make investments in small businesses either through long-term subordinated loans or through the purchase of stock, or a combination of both.

Subsequent to 1958, to encourage SBICs to invest more in minority small businesses, a special class of SBICs was authorized (commonly called Minority Enterprise SBICs or MESBICs). In the twelve years since these specialized companies were authorized and licensed, they have provided financial assistance to almost 5,000 minority concerns for a total of over $250 million. The combination of these programs has provided financial assistance of more than $4.4 billion to over 66,000 small businesses in the United States. The total Federal investment in the SBIC and MESBIC industries which supports this huge investment amounts to $1.7 billion and it has been a highly cost-effective investment for the Federal government. The Subcommittee took testimony from SBICs, MESBICs and small businesses which these SBA licensees, in turn, have assisted. The Subcommittee received valuable information assisting in oversight of SBA program performance, particularly in these times of budgetary restraint with programs regrettably underfunded.

SUBCOMMITTEE ON GENERAL OVERSIGHT

Following are hearings conducted by the Subcommittee during the 97th Congress:

(A) Impact of Reagan Economic Program on Small Business.—May 19, 1981

The hearing heard from Prof. Francis Bator, a Harvard University economist; Prof. Robert Berney, a small business economist at Washington State University, Pullman, Wash.; and Norman Ture, Treasury Undersecretary for Tax and Fiscal Policy. The hearing focused on how small business would fare under the Reagan administration's economic program. Prof. Bator warned that the economy would slide into a deep and prolonged recession if the administration followed through on what he called its contradictory tight money and expansive fiscal policies. Prof. Berney focused on the deep deficits that were expected as a result of the loss of Federal tax revenues and the administration's failure to adopt real spending cuts. He warned that the deficits would keep interest rates high which, in turn, would seriously hurt small business. Dr. Ture said he was confident the President's economic program would unleash the American economy and would ultimately help small business.

(B) Small Business and the Federal Procurement System.—June 18, 23, and 25, 1981

The 3-day hearing, which heard from Government, industry, and small business witnesses, focused on Government efforts to assure that small business received a fair opportunity to compete for Government contracts. Witnesses told of the difficulties encountered by small businesses in using the Federal procurement system and dealing with Government agencies, how increased use of small business could save the Government money, and the lack of understanding of small business' special needs and problems shown by the Reagan administration. The hearing was called to hear from the Office of Federal Procurement Policy, the Department of Defense, and the Small Business Administration how they planned to carry out the intent of Public Law 95-507 and the Labor Surplus Area and various small business set-aside programs.

(C) Small Business Administration's Guaranteed Loan Policies.—July 30, 1981

The hearing focused on the heavy burden of high interest rates on small businesses and ways to reduce the interest rates charged on SBA guaranteed business loans. The hearing heard from Ronald Piercy, a small businessman from Kansas City, Mo.; William Bolt, Vice Chairman, United Missouri Bank, Kansas City, Mo.; Paul E. Ruch, Executive Vice President, Marine Midland Bank, Buffalo, N.Y.; Jackie Kleiner, an Atlanta, Ga. lawyer challenging the validity of the prime rate; and Michael Cardenas, Administrator, Small Business Administration.

(D) Small Business Innovation Development Act (H.R. 4326).—September 15, 1981

The hearing laid the groundwork for House consideration of the Small Business Innovation Development Act (H.R. 4326). The Small Business Innovation Development Act provided for the establishment of Small Business Innovation Research programs in Federal

agencies with research and development budgets exceeding $100 million a year. Witnesses included the National Council for Industrial Innovation, the Smaller Business Association of New England, the National Federation of Independent Business, the National Small Business Association, the American Association of Small Research Companies, the Association of American Universities, the Small Business Administration, Office of Science and Technology Policy, the Defense Department, National Aeronautics and Space Administration, the Department of Energy, the Department of Health and Human Services, and Dr. John Eastin, an inventor from Grant, Nebr. The Subcommittee reported the bill unanimously on October 7, 1981. H.R. 4326 was unanimously reported by the full House Small Business Committee on October 22, 1981.

(E) Insurance Agent Commission Deregulation.—September 21, 1981

The hearing focused on H.R. 4497, the Insurance Sales Deregulation Act, which was introduced to repeal the portion of the McCarran-Ferguson Act which prohibits insurance agents from offering discounts on commissions. Witnesses included Ralph Nader; Susan Mitchell, Wisconsin Insurance Commissioner; insurance professors; and spokesmen for the insurance industry.

(F) Worker Compensation Rate-Setting Reform.—February 18, 1982

Two worker compensation insurance rate-setting practices which may be severely discriminating against our Nation's small businesses were examined by the Subcommittee. These practices appear to be so widespread and so deepseated that, notwithstanding recent efforts in a few States to reverse these practices, they continue to cost our Nation's business community in excess of $1 billion a year in inflated worker compensation premiums.

The two practices are: (1) The refusal by the insurance industry to submit worker compensation rates which reflect the billions of dollars of investment income earned by these insurers annually; and (2) the steadfast resistance by worker compensation insurers to switch from the present cartel-dominated fixed-rate system to one permitting open competitive rating.

Worker compensation insurance is a highly profitable line of business for the insurance industry. Annual premiums exceed $20 billion. However, worker compensation premiums frequently account for 10 percent or more of payroll costs for smaller labor-intensive firms. In some cases, small businesses pay as much as 20 percent of their payroll costs into worker compensation premiums.

The hearing examined the issue from the perspective of small business and explored ways to provide relief to small firms. The Subcommittee received written testimony from Michael Markman, the Minnesota Insurance Commissioner, who is a leader in efforts to reduce worker compensation premiums. It heard from William Johnston, Chairman of the Ohio Industrial Commission, and Spencer Kimball, Executive Director of the American Bar Foundation.

Both sides of the investment income and competitive rating issues were invited to the hearing to explore all aspects of the problem. Insurance industry representatives declined to appear.

The General Accounting Office was asked to investigate the rate making reforms discussed at the hearing.

(G) Productivity.—March 23 and 24, 1982

The hearings were held to learn more about the productivity improvement programs underway in the public and private sectors. Witnesses included officials from the U.S. Commerce Department, the U.S. Labor Department, the General Accounting Office, the Georgia Productivity Center, the Robot Institute of America, and Japan Productivity Center. A major share of the testimony focused on the need for greatly increased productivity improvement efforts to serve the small business sector. Testimony concerning Japan's efforts to boost small business productivity was presented.

(H) Impact on Small Business of Proposed Cuts in the Small Business Administration's Guaranteed Business Loan Program.—March 31, 1982

At a time when small businesses find it hard to borrow money, the Reagan administration has made deep cuts in the Small Business Administration's guaranteed business loan program. Over the year, SBA guaranteed loans have been a safety net for small business. Thousands of small businessmen have found the SBA guarantee the only way they could receive a bank loan to start a new small business, tide a healthy small business over difficult times, and create thousands of new jobs. By fiscal year 1983, the Reagan administration will have cut SBA's guaranteed loan program almost in half, to $2.4 billion from $4.5 billion in fiscal year 1981.

The hearings focused on how small business today is being crowded out of bank lending, the traditional source of its capital; how guaranteed business loans have contributed to economic development and job creation; how the reductions in the guaranteed loan funds will hurt small business; and why the program is needed to make capital available to small business and contribute to an economic recovery.

Witnesses at the hearing included Joel Popkin, Joel Popkin & Co., Washington, D.C.; Professor Robert Berney, a small business economist at Washington State University, Pullman, Wash.; Harold Davis, President, Concentration Specialists, Inc., Andover, Mass.; Peter Howell, President, Down East Inc., Bridgton, Maine; Arthur Mitchell, Senior Vice President, Capital Bank & Trust Co., Baton Rouge, La.; and J. Knox McConnell, President, First National Bank of Keystone, Keystone, W. Va.

(I) Current Business Failure Epidemic.—June 23, 1982

More businesses are failing in 1982 than at any time since the Great Depression. The Dun & Bradstreet business failure rate for the first half of 1982 stood at 88 per 10,000 listed companies, the highest rate since 100 per 10,000 listed companies reported for 1933. These figures have serious implications. The U.S. economy needs a healthy, expanding small business sector if it is to recover from the current deep recession. Today's failures are almost all small businesses. The Dun & Bradstreet figures, which President Reagan's recent report of "The State of Small Business" calls a "valuable indicator of business distress," showed a 45-percent rise

in business failures from 1980 to 1981 and a 44-percent increase from the first half of 1981 to the first half of 1982.

The hearings brought together leading academic, industry, small business, and bankruptcy experts to discuss why there are so many business failures today and what the future holds. Witnesses included Dr. Edward I. Altman, a professor of finance at New York University and a leading expert in predicting business failures; Joseph W. Duncan, chief statistician of Dun & Bradstreet; Herbert Liebenson, President, National Small Business Association; Dean M[illegible]ndy, U.S. Bankruptcy Judge, Dallas, Tex.; James T. Eichst[illegible]t, U.S. Trustee, Los Angeles, Calif.; and William P. Westphal, Sr., U.S. Trustee, Minneapolis, Minn.

The Subcommittee was told that American business is experiencing its worst liquidity crisis since the Great Depression. At least 15 percent of the Nation's businesses are on the verge of failure, Dr. Altman testified, because they are so overwhelmed by high interest rates. The witnesses stated that the increase in failures cannot be attributed to the new Federal bankruptcy code that became effective in 1979. They warned that business failures would continue to rise sharply if interest rates continued at high levels, the recession persisted, and if economic policies were not changed to significantly lower interest rates and encourage a long, sustained recovery.

(J) Section 503 Certified Development Company Program.—July 28, 1982

The Subcommittee examined the Small Business Administration's Section 503 Certified Development Company Program as a model for local economic development and financial assistance to small business at affordable interest rates. The 503 program was established by Public Law 96-302 enacted July 2, 1980. The program authorizes State and local development companies to issue debentures that carry a 100-percent SBA guarantee; to sell those debentures using SBA as their sales agent; and to use the proceeds to make low-interest, subordinated long-term loans to small businesses.

The 503 program is designed to stimulate the growth of viable small businesses through a public/private partnership. The progam's purpose is to help local communities by encouraging the expansion of small businesses within a defined area of operation. The certified development companies provide long-term, fixed-asset financing to small businesses that would otherwise not be able to expand due to high interest rates or lack of bank financing.

The hearing explored how the 503 program is working and gave witnesses the opportunity to recommend changes in the program. The Subcommittee heard from John Sower, Executive Vice President, National Association of Development Companies; Aliceann Wohlbruck, Executive Director, National Association of Development Organizations; officials of local development companies; representatives from the banking industry; and James C. Sanders, Administrator, Small Business Administration.

(A) Competition in the computer and data processing industry

In an information-oriented business world, computer applications lie at the heart of the decision-making process. Rapid advances in commercial applications and technology have narrowed the distinctions between previously separated types of commercial activity. The once clear distinction between computing and communications has blurred considerably, and the Federal Communications Commission, the Judiciary, and the Congress have attempted for over a decade to determine what elements of these activities should be regulated as communications, and how they should be regulated.

The enormous growth in the computer and data processing field has spawned a large number of small and innovative firms in the last 15 years. The tremendous advances in services and technology over that time can be attributed to the vitality and creativity of an industry in an open and competitive market.

However, concern has arisen that this competitiveness may be threatened by the entry of large firms in regulated industries into the unregulated computer and data processing industry.

A hearing was held by the subcommittee on May 7, 1981, in Washington, D.C., to receive testimony from representatives of the computer and data processing industry. Witnesses who appeared and testified include: Association of Data Processing Service Organizations (ADAPSO), by David Chaffin and John Reardon; Computer Dealers and Lessors Association, by Ken Bouldin; Association of Computer Users, by Hillel Segal, President; Computer and Communications Industry Association, by Jack Biddle, President; Independent Data Communications Manufacturers Association, by Charles Johnson; and American Telephone and Telegraph by Robert Allen, Vice President of Business Services.

The witnesses generally agreed that the industry was both growing rapidly and highly competitive. The concern of several witnesses was that the competitive nature of the industry would be damaged by the entry of regulated firms in the unregulated computer and data processing industry.

Mr. Segal and Mr. Allen felt that the entry of regulated firms would enhance competition and lower the cost of services in the industry. Mr. Segal and Mr. Allen both made reference to the ability of Congress to propose legislative remedies if abuses should occur, and Mr. Segal felt that existing laws contained adequate protection against anticompetitive practices.

ADAPSO expressed concern that the entry of banks into the data processing market would undermine competition in the industry by cross-subsidization of unregulated data processing subsidiaries by the profits from the banks' regulated activities. Voluntary tie-ins were also criticized by ADAPSO counsel P. Michael Nugent:

"Businesses seeking lines of credit with a bank receive direct and indirect pressure or suggestion from banks to bring their computer service business (such as payroll or accounts receivable/payable) to the bank. These credit applicants, hoping to curry the favor of the bank representative, often agree to have the bank serve their data processing and transmission needs. The result is lost business to

the independent computer service vendor and purchase of computer services not on the basis of price, quality, or need, but as a consequence of the 'voluntary' tie-in. As such, the adverse economic effect of the voluntary tie-in is tantamount to that of the coercive tie-in. In the same way, businesses not directly involved in credit negotiations nonetheless seek to obtain preferred and hopefully guaranteed access to the scarce and 'tight' financial resources of banks and holding companies by giving the bank or holding companies their data processing and transmission business."

ADAPSO favored a remedy of permitting no competition between regulated and non-regulated companies. ADAPSO felt that if competition between regulated and non-regulated companies could not be stopped, that the regulated company should "separate the resulted and unregulated activities, so that the abuses (ADAPSO) described, such as voluntary tie-ins and cross-subsidization, don't occur as a result of spillovers of regulated economic power." Mr. Segal also favored maximum separation, but not a ban on regulated firms in unregulated industries.

Mr. Jack Biddle of the Computer and Communication Industry Association also had doubts about the entry of regulated firms into the industry, objecting to both the entry of banks and of A.T. & T., who, as a regulated monopoly can take profits derived from the regulated side of the business and flow them to the competitive side. Mr. Biddle was skeptical of maximum separation, because "as long as you have single control and ownership and flow through comes from the regulated industry to the unregulated, the incentives are to maximize the profit of the separate subsidiary." Charles Johnson, of the Independent Data Communication Manufacturers Association, similarly felt A.T. & T. would have an unfair advantage in the computer and data processing industry, stating:

"Because independently manufactured equipment must be compatible with A.T. & T.'s switched network, A.T. & T. has the power to establish de facto technical standards for the equipment. Since it governs the establishment of these standards, and the timing of their introduction into the network, A.T. & T. has the ability to deter the connection of independently manufactured equipment to its switched network, until its integrated manufacturing facility, Western Electric, can develop equipment to meet the changed or new standards."

(B) Conrail changes and their impact on small business

Since Conrail's formation in 1976, the railroad has failed to produce a positive cash flow. In the process, Conrail has used nearly $3.3 billion of Federal funds. Unless significant changes occur, such a monetary trend will continue.

The Staggers Rail Act of 1981 mandates reports to Congress from Conrail, United States Railway Association, and the Federal Railroad administration on needed changes and the direction Conrail should proceed in the coming years. Any changes in Conrail would affect many small businesses in a five State area that are currently dependent on Conrail service. Many of these businesses are located along short-line connections, many of which are relatively low-volume lines. These small businesses will have to find alternate

rail or truck transportation if Conrail abandons service on their lines. If many small businesses go out of business as a result of increased transportation costs, it will have a significant harmful impact on their communities.

The subcommittee held hearings on June 9 and June 11, 1981, in Washington, D.C., to determine what effect the proposed Conrail changes would have on small business and small shippers. Witnesses who appeared and testified on June 9 include: Federal Railroad Administration, by Richard Schiefelbein, Deputy Administrator; Consolidated Rail Corporation, by Stanley Crane, Chairman; Ohio Rail Transportation Authority, by Robert Casey, Executive Director; and New York State Department of Transportation, by John Mladinov, Deputy Commissioner.

Witnesses who appeared and testified on June 11 include: United States Railway Association, by Stephen Berger, Chairman; Pittsburgh and Lake Erie Railroad, by Henry Allyn, Jr., President; Delaware and Hudson Railroad, by Dent Shoemaker, President; The Tamarkin Co., by Burt Tamarkin; International Boiler Works, by Fred Taylor, President; Milazzo Industries, by Samuel Milazzo; Derkshire County Shippers Association, by Thomas Lawlor.

Mr. Casey and Mr. Mladinov felt that service to the small businesses on short-line service must continue for the well being of local and State economies, regardless of whether Conrail, some other large railway, or locally owned and operated short-line operators, provide the service. They raised objections to proposed State contributions to aid Conrail.

Mr. Crane and Mr. Schiefelbein agreed that a continued temporary Federal commitment to Conrail was necessary to bring them to profitability. Mr. Crane felt that Conrail could indeed become profitable within five years. Mr. Crane and Mr. Schiefelbein agreed that Government funding for Conrail meant uncertainty. Businesses could not plan ahead as long as the status of their rail connections were in question. During the years since 1976, Mr. Crane noted, the companies that could easily switch to trucks from railroads did so, meaning that the customers Conrail currently has are likely to be more reliant on rail transport than Conrail's customers of 5 years ago.

Mr. Berger testified that the United States Railway Association recommends that a process be put into place to allow Conrail to survive if it made real economic progress. However, Mr. Berger noted, Conrail's viability depends on the willingness of labor, management, shippers, States, local governments, and other railroads to make the concessions and agreements necessary to keep Conrail alive. Attempting to transfer major portions of Conrail's lines depends on the willingness of other railroads to acquire those lines. Mr. Berger testified that there was both little interest in acquiring Conrail lines among other railroads, and little economic necessity to take an active interest in acquiring those lines, since Conrail's traffic predominately originates and terminates in Conrail's service region.

Mr. Allyn of the Pittsburgh & Lake Erie Railroad endorsed the Reagan administration's proposal to promote the transfer of Conrail's lines to the private sector within a specific time frame. Mr. Allyn expressed Pittsburgh & Lake Erie's willingness to acquire a

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part of Conrail's lines if the administration proposal passes Congress. Mr. Shoemaker of the Delaware & Hudson Railroad expressed opposition to Conrail's attempt to take over Delaware & Hudson's lines as part of Conrail's attempt to become profitable. A takeover of Delaware & Hudson by Conrail would be injurious to competition in Northeast rail service.

The Subcommittee heard from a small shippers panel which testified of the necessity to preserve rail service for their businesses, and of their desire to see an orderly transfer of Conrail lines to the private sector.

(C) EPA proposed rulemaking on chlorofluorocarbons and its impact on small business

In October 1980, the Environmental Protection Agency issued an Advanced Notice of Proposed Rulemaking restricting the production and use of nonaerosol chlorofluorocarbons (CFC's). Developed in the 1930's, CFC's are synthetic compounds that are used extensively in refrigerants and insulation.

The EPA took this action based on the theory that CFC's, released into the atmosphere, would make their way to the stratosphere and cause a reduction in the earth's ozone layer.

CFC's are widely used in the air-conditioning, automobile, food, and packaging industries. Any regulation of this substance would admittedly have an impact on the large number of small businesses within, and related to, those industries.

In conjunction with the Subcommittee hearings, Congressman Thomas A. Luken, Chairman of the Subcommittee, introduced H.R. 1853 which would prevent EPA from enacting a regulation limiting production of CFC's until it can be shown that this substance does in fact deplete the atmosphere's ozone layer.

To date, EPA has taken no action beyond the Advanced Notice of Proposed Rulemaking (ANPR).

The Subcommittee held a hearing on EPA's ANPR in Washington, D.C., on July 15, 1981, to hear testimony from small business users of CFC's, and the EPA. The witnesses who appeared were: Jon M. Pierce, P. W. Ravanesi, Timothy J. Fahrney, and John H. Reilly, representing the air-conditioning industry; H. W. "Ace" Bradley, William Jelin, Herbert Coon, Jr., and Linda Kohler, representing the foam industry; Raymond Way, John Randazzo, Glen C. Rager, David N. Freedman, and Charles Ruzzuto, representing the food industry; David Begin, a solvent manufacturer; Clay Smith, a coal cleaning processor; and Edward A. Klein of EPA.

Mr. Klein of the Environmental Protection Agency testified that the agency's concern for CFC's effect on health and environment was triggered when it was found that there was a significant increase in the use of nonaerosol CFC's during the years 1974–79. Expected recovery of the automobile and construction industries, combined with expected market growth in the use of CFC solvents, food freezing, and other applications may lead to a 5-percent annual growth rate and an eventual increase to record production levels.

Mr. Klein's testimony was based on an EPA-commissioned study of the economic implications of regulating CFC emissions from nonaerosol applications conducted by the Rand Corporation. The study concluded that a production restriction would be a more effective

and efficient way of curbing CFC releases into the atmosphere. The study found that production restriction would cause the price of CFC's to rise and provide an economic incentive for firms to reduce CFC emissions, conserve CFC use, or find alternatives to CFC.

In analyzing individual industry sectors that use CFC's, the study found that the air-conditioning and refrigeration industry has no alternative to CFC's and that that industry would have to continue using and purchasing CFC's even as the prices increased. It is believed that the flexible foam industry could implement recovery and recycling technologies and could switch to substitute chemicals but it is acknowledged that the cost of recovery and recycling equipment does not appear to vary significantly with the size of the plant, thereby leaving smaller plants at a cost disadvantage. Further, it was anticipated that the foam packaging industry would be severely affected by a production restriction. It was noted that purchasers of foam packaging would likely switch to other types of packaging rather than pay the higher costs brought about by less CFC's.

The industry witnesses were unanimously opposed to production restrictions on CFC's. It was pointed out that a very large portion of the producers and users of CFC's were small businesses, often family owned and operated businesses, and they would be the most affected by any regulation enacted by EPA.

First, it was admitted that EPA was correct in projecting a price increase for CFC's if curbs are placed on the solvent's production. Small businesses universally worried, however, that they would be shut out of the CFC market because they would not be able to pay the increasing costs of the solvent. Nor did they have any hope of outbidding their larger competitors for the limited amount of CFC's that would be available.

It was further pointed out that while CFC's provide the most energy efficient method of insulating, the arithmetic of energy saving would not tolerate an increased cost of insulation. It will once again become more economical for people to waste energy.

The industry witnesses also expressed a grave concern over the lack of practical substitutes for CFC's. In the insulation industry, it was noted that CFC's provide the highest degree of energy conservation. In the foam packaging industry, witnesses testified that the substitute, pentane, is an explosive, volatile substance that poses a threat to life and property. Witnesses representing the food industry stated that CFC's are needed to manufacture the only fumigant available that eliminates bacteria from spices, and that the only alternative to preserving perishable foods, whether at the wholesale, processing, or retail level, is ammonia which is highly toxic, explosive, and flammable.

In addition, every witness, representing every industry, testified that the amount of money that would be required to change over the equipment in manufacturing plants, grocery stores, office buildings, laboratories, etc., to use a substitute for CFC's would be prohibitive to most concerns and would cause a large amount of bankruptcies and increased costs to consumers where the cost of conversion could be passed on.

(D) High interest rates and their impact on small business

During the first year of President Reagan's administration, Congress, acceding to the administration's wishes, passed an ambitious program of tax and spending cuts which were to curb inflation, spur savings, and ultimately, lower the interest rates.

But by October 1981, the prime rate stood at 19 percent, savings and loans were offering home mortgages at 17½ percent, and the national unemployment rate was 8 percent. Housing production has reached its lowest level in nearly two decades, automobile sales were down 3 million from the last decade's best year, and interest rates accounted for about 10 percent of farm production costs.

In order to hear directly from the persons most affected by high interest rates, the Subcommittee held a series of hearings: In Cincinnati, Ohio on October 3; Youngstown, Ohio on October 5; and Omaha, Nebr. on October 8, 1981.

The Subcommittee heard from representatives of labor, the building industry, realtors, automobile dealers, small thrift institutions. and local small business associations.

Each witness testified about the effect of high interest rates on their sector of the economy, and the ripple effect throughout the economy. For example, automobile dealers stated that nationally, over 2,500 dealers had gone out of business over the last 30 months, and that in one metropolitan area alone, this resulted in a loss of over 20 percent of the jobs that dealers were responsible for.

A home builder testified that because of the skyrocketing interest, the average cost of a home that he builds has risen $25,000 in less than 4 months, and requires $4,000 more in down payment. This has resulted in a severe financial loss for this builder, and the loss of business has caused the failure of 10 out of the 45 subcontractors and suppliers regularly used to construct the homes.

It was shown that on a national level, savings and loans lost $1.5 billion in the first six months of 1981.

Ohio realtors testified that their ranks will have declined by 25 percent in 1981 and that while new construction is expected to total 1.6 million units in 1982, this is inadequate to meet the 2 million units a year anticipated demand.

Many witnesses offered suggestions on how best to lower the interest rate. The recommendations which enjoyed the broadest support were:

(1) The President and Congress should take whatever steps are necessary to balance the Federal budget by fiscal year 1984, thereby reducing Government activity in credit markets.

(2) Appointment of a non-banking, small business person to fill the next available vacancy on the Federal Reserve Board.

(3) Elected officials, such as Congress and the President, should be made to have more influence and input into the decisions made by the Federal Reserve Board.

(4) The life of the All-Savers Certificate should be extended and additional steps should be taken to insure that the resulting savings be used to assist the housing industry.

(5) If the interest rate has not fallen substantially, and remained at that level for a period of time, the across the board 10 percent

personal income tax rate cut scheduled for July 1, 1982, should be delayed or cancelled.

(6) Congress and the President should encourage the Federal Reserve Board to allow the money supply to grow at the upper range of their target rate.

(7) Congress should develop and authorize alternative methods of financing home mortgages, such as through pension funds or tax exempt revenue bonds.

(8) Large banks must be prevented from making huge loans to finance corporate mergers which do not add to the gross national product.

(E) Causes of the increase in small business failures

In an attempt to strengthen the beleaguered economy, Congress in 1981 passed the largest tax cut in this Nation's history in order to promote savings and investment. Since then, the Federal Reserve Board maintained tight money supply policies which limited, as well as increased the cost of, available investment funds.

The country's economic condition was reflected in the Dun & Bradstreet figures on business failures. Their data for the first 23 weeks of 1982 showed that the number of business failures was 44.3 percent over one year ago. The 1981 figure reflects an increase of 110 percent over the 1979 statistics.

The 1982 failure rate is the highest since the failures recorded in 1933 in the midst of the Great Depression. At that time, 100 businesses out of every 10,000 failed. In 1982, the failure rate is expected to reach 90 out of every 10,000 concerns.

In addition, it was recognized that small businesses faced special problems during recessionary times. When credit is tight and interest rates are prohibitive, small businesses are frequently squeezed out of the credit market due to the unavailability or the high cost of money and therefore become unable to finance their operations.

In order to examine the causes and effects of the alarming increase in the number of business failures, the Subcommittee held a hearing in New York City on June 25, 1982. Witnesses included small business owners, attorneys specializing in insolvency proceedings, a banker, and an economist.

From their many years of experience in business, the small business owners observed that the Federal Reserve Board's policy of maintaining high interest rates is counterproductive in that it increases the Government deficit and further fuels inflation.

Witnesses agreed that small businesses were caught between opposing forces in that a company that made a decision several years ago to expand usually was required to do so with a variable rate loan, and now that the interest rate has reached 20 percent, they can no longer afford to service their debt. Couple this with the fact that the customers of these small businesses are also experiencing difficult times and are required to delay, or avoid, payment to the small businesses.

Further, it was recommended that the Federal Reserve Board establish policies to control not only inflation or interest rates, but the real interest rate as well. That is, the actual cost of money which is determined by subtracting the inflation rate from the interest rate charged on a loan. Historically, this rate has averaged

between 2 and 3 percent. Witnesses believed that figure would be manageable in any well run company.

All witnesses agreed that in spite of the fact that money lenders are entitled to a profit on a transaction, all creditors should use moderation when attempting to collect from a small business in financial difficulty.

Mr. Mike Schochat, Vice President of the Commercial Bank, described the bank's program to reach out to small businesses and provide them not only with money but total financial management assistance.

In reviewing the overall economy and its effect on business failures, Raymond Dalio, an economist, cited these problems:

(1) The economy now has the highest debt as a percentage of GNP since the Depression years of the 1930's.

(2) Corporations now have the lowest ratio of assets to debts.

(3) Over 40 percent of all corporate debt is short-term.

(4) Real interest rates reached the highest level since 1929.

(5) The amount of money used to pay interest has not been this high since the Great Depression.

A number of witnesses, including the banker, economist, and attorneys, agreed that a viable solution to the problem would be to specifically target Government assistance to the economic sectors that need it the most, while pursuing long-term solutions to the economy.

IMPACT OF FEDERAL ANTITRUST ENFORCEMENT POLICIES ON SMALL BUSINESS

Background

Judge Learned Hand once noted that one of the purposes of the antitrust statutes ". . . was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other."

It was with this goal in mind that Congress passed the Robinson-Patman Act in the 1930's. The small business community has traditionally looked towards the Robinson-Patman Act and the laws governing resale price maintenance for protection from unfair and discriminatory pricing practices by larger businesses. In previous Congresses this subcommittee has held oversight hearings in response to proposals to amend or repeal the Robinson-Patman Act, and the small business community has always strongly endorsed retention of the current statutes.

Recent statements opposing Robinson-Patman and the laws governing resale price maintenance by those officials charged with enforcing the statutes have caused widespread concern throughout Congress and the business community. William Baxter, Assistant Attorney General in charge of the Justice Department's Antitrust Division has described Robinson-Patman as "a dreadful piece of legislation", full of "absurdities" and an "unjustified protection for small business from the rigors of competition". The Chairman of the Federal Trade Commission, James Miller, has described circumstances where he believes price discrimination "deserves applause rather than prohibition".

Mr. Baxter has also expressed reservations concerning the laws on resale price maintenance, stating that "the disagreement is not about the present state of the law so much as whether the law really makes sense. The Supreme Court has said on a variety of occasions that vertical price fixing is per se illegal . . . It is the position of the Antitrust Division that [this practice] should not be illegal per se in view of certain competitive principles."

To determine whether these stated disagreements with the law have affected these officials' enforcement of the statutes, the subcommittee held a hearing on September 9, 1982, in Washington, D.C. to receive testimony from small businessmen, academics, and officials of the Department of Justice and Federal Trade Commission.

Summary of testimony

In testimony before the subcommittee, the Small Business Legislative Council and the National Association of Retail Druggists expressed strong support for the Robinson-Patman Act.

The Small Business Legislative Council testified that Robinson-Patman promotes, rather than hinders, competition. They reserved their strongest criticism for the FTC and Justice Department officials for their public statements in opposition to Robinson-Patman and the laws governing resale price maintenance. The SBLC feels that companies will be less inclined to comply with these laws now that the nation's top two antitrust officials have stated their opposition to the principles embodied in the statutes, as well as their intention to place less emphasis on enforcement of those laws. The National Association of Retail Druggist endorsed Robinson-Patman, citing the fear of small pharmacies that large drug store chains will gain an unfair advantage through induced price discounts.

The National Food Brokers Association submitted a statement citing the pro-competitive effects of Robinson-Patman in the food brokerage trade.

Professor William Lovett of Tulane University School of Law submitted testimony citing the intent of Congress to protect small business, and not just to promote economic efficiency, when it passed Robinson-Patman. He noted that due to the increased costs of private litigation and greater requirements of proof, that government involvement in Robinson-Patman enforcement is essential to the proper functioning of the statute.

Dr. Thomas Campbell, Director of the the FTC's Bureau of Competition, stated that the FTC was not advocating repeal of Robinson-Patman. However, Dr. Campbell asserted that the Commission is required under the FTC Act not to bring a case unless it were in the public interest. Dr. Campbell testified that he would not recommend action in those cases where resale price maintenance helps competition, despite the Supreme Court's ruling of per se illegality in such cases. He added that the Commission must commit its limited resources to areas where enforcement is most needed, and that towards that end he must use his prosecutorial discretion in deciding which cases the Commission should bring from the many investigations of possible antitrust violations.

Among those testifying on the laws governing resale price maintenance were representatives of the Association of General Mer-

chandise Chains and the National Mass Retailing Institute, who testified that the merchant's ability to determine what merchandise to offer and what prices to ask is essential to retail competition. T. C. Wilkinson, of Marine Electronics of Lake City, South Carolina, testified of the problems he faced as a discount retailer being pressured to maintain a minimum price on the items he sells by his suppliers.

The National Federation of Independent Business submitted testimony indicating an overwhelming majority of their membership were opposed to permitting resale price maintenance.

Professor John Flynn of the University of Utah Law School submitted testimony highly critical of the theoretical basis behind the Administration's antitrust policies. Mr. Baxter and Chairman Miller, he noted, followed the so-called "Chicago School" antitrust doctrine, wherein the promotion of economic efficiency is seen as the goal of the antitrust laws rather than non-quantifiable values such as equity, fairness, and justice. Prof. Flynn added that the current enforcement posture of the Justice Department, the maximization of output, is in conflict with the Congressional intent when the antitrust laws were passed, which was to promote equity and equality of opportunity in the economy.

Prof. Flynn recommended that all vertical trade restraints should be considered presumptively unlawful, and that there be a re-emphasis on the historical goals of antitrust: dispersion of economic power, freedom of opportunity to compete, satisfaction of consumers, and protection of the competitive process.

William Baxter, Assistant Attorney General, Antitrust Division, testified that there are a number of contexts in which resale price maintenance can be beneficial, and disagreed with the Supreme Court's per se rule of illegality in resale price maintenance cases.

Mr. Baxter indicated that he would only prosecute those resale price maintenance cases that facilitate horizontal collusion, and where private litigation has not been effective as a deterrent. The Justice Department's goal is to change the courts' interpretation of resale price maintenance statutes to a rule of reason standard, rather than to change the law, whose language he finds acceptable.

SUBCOMMITTEE ON ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS

The following is an outline of the Energy Subcommittee's activities in the 97th Congress.

(A) H.R. 1362, Motor fuel marketing

On March 31 and April 1, 1981, the Subcommittee held hearings on H.R. 1362, the Small Business Motor Fuel Marketer Preservation Act of 1981. This legislation is derived from a similar bill, H.R. 6722, which was reported out of the Small Business Committee late in the 96th Congress.

Markup of H.R. 1362 was postponed while the Senate Judiciary Committee considered companion legislation, S. 326. The Senate bill was amended and favorably reported in 1981, but has not come to the floor yet. On March 15, 1982, the Subcommittee voted to table H.R. 1362.

(B) Energy conservation and small business

The Subcommittee held two field hearings to study energy conservation by small business. The hearings were held on October 19, 1981, in Salem, Mass., and on March 15, 1982, in Cleveland, Ohio. Both hearings included considerable discussion of energy tax credits, which the administration had proposed eliminating but which were strongly supported by small businesses. The energy tax credits have been retained.

(C) International energy negotiations

On October 21, 1981, the Subcommittee met in joint session with the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce. The focus of the hearing was on the U.N. Conference on New and Renewable Energy, held in Nairobi last year, and on follow-up negotiations to provide financing through the World Bank for purchase of alternative energy technologies by less developed nations. The so-called Third World is seen by many as the most logical mass market for new energy technologies now being pioneered by smaller companies in the United States.

(D) Pollution control financing

The Subcommittee held three hearings on the subject of pollution control financing for small businesses. The hearings were held on November 4, 1981, and March 10 and 31, 1982. All were in Washington, D.C.

These hearings clearly demonstrated the continuing need of small businesses for assistance in meeting extraordinary capital requirements related to compliance with environmental protection laws and regulations. The Small Business Administration's pollution control financing program was praised as a successful approach to solving this problem. The SBA program couples Federal Government loan guarantees with small-issue industrial development bonds issued by local governments.

By administrative actions in 1981, small issue IDBs were virtually eliminated and the SBA program was practically wiped out. Provisions in H.R. 6086/S. 1947 (pending final action in the Senate) would restore the SBA program. The Subcommittee has repeatedly conveyed to the Ways and Means Committee the importance of small-issue IDBs to small businesses faced with pollution control financing requirements.

(E) Waste oil recovery

On February 11, 1982, the Subcommittee conducted a field hearing in New York City to examine the recycling of used motor oil. The waste oil recovery industry is composed almost exclusively of small businesses.

In late 1981, there were reports of various questionable activities in the handling of waste oil in New York, New Jersey, and Pennsylvania. Consequently, the field hearing examined not only the Federal programs regarding waste oil but also State and local enforcement activities.

The hearing revealed that budget cutbacks and administrative decisions have jeopardized several Federal programs which witnesses said are important to addressing the issue. The Subcommittee has worked successfully with other Committees to correct these problems through substantive legislation and the budget process. On December 8, 1982, the General Accounting Office sent Subcommittee Chairman Bedell a letter report on the subject of used oil collection and disposal practices of various Federal agencies (GAO/PLRD-83-12). The report underscores the continuing lack of a government-wide policy on handling used motor oil. It also notes the preliminary finding that "adulteration of used oil with hazardous waste materials is the norm rather than the exception."

(F) Energy disruptions

On May 18, 1982, the Subcommittee held a hearing on the vulnerability of national energy distribution systems. The hearing confirmed that small businesses and agriculture are the elements in our economy which are most sensitive to interruptions in energy supplies, but that they also enjoy the greatest potential for energy independence. The witnesses all agreed that key elements of our several centralized energy distribution systems are vulnerable to disruption and that such disruptions should be anticipated.

This hearing was followed by an off-the-record meeting of Subcommittee members and staff with appropriate officials from the Department of Energy. The Subcommittee also requested that the General Accounting Office investigate several questions that were raised in the hearing. Their report, entitled, "The Federal Government Is Still Not Adequately Prepared To Respond to Major Electrical Emergencies" (GAO/EMD-82-125) was issued on September 13, 1982.

(G) H.R. 6389, H.R. 6391—Urea-formaldehyde foam

On Augest 4, 1982, the Subcommittee held a hearing to consider two bills which would provide low-interest SBA disaster assistance loans to homeowners seeking to remove/replace urea-formaldehyde foam insulation in their houses. The legislation also would assist small businesses that manufactured or installed UF and now seek to enter new ventures. UF foam was banned by the Consumer Product Safety Commission earlier this year.

(H) Small business energy loans

On August 5, 1982, the Subcommittee conducted an oversight hearing to review the SBA's energy loan program. The Subcommittee was concerned by reports that only $1 million of the $25 million appropriated for this program had been spent, yet potential applicants were being told that no funds are available. SBA has agreed to work with the Subcommittee to assure that field offices obtain a better understanding of the program and that the available funds are used as Congress intended.

This hearing was supplemented by a Subcommittee staff report based upon a survey of current energy loan program participants. That report has been published as a committee print.

(I) Gasoline marketing practices

On December 1 and 2, 1982, the Subcommittee conducted hearings on the subject of gasoline marketing since decontrol. This was the first comprehensive review of what has been going on in the gasoline marketing industry since federal price and allocation regulations governing petroleum products were dropped in early 1981.

The Subcommittee had received numerous requests from small business operators to look into recent changes in the gasoline marketplace that were adversely affecting wholesale distributors and independent marketers. Complaints included charges that some refiners were selling gasoline at retail in company-run stores at prices equal to or below the prices those same refiners sold the gasoline at wholesale to independent businesses, thus placing the independent marketer at an unfair disadvantage. Also, it was alleged that some refiners are restricting the availability of product to their wholesale distributors while making unlimited supplies available to competing outlets directly supplied by the same refiner.

At these hearings, several witnesses suggested that at least one major oil company has engaged in questionable accounting practices in order to reduce its federal tax liability by hundreds of millions of dollars per year. This tax saving, it was said, is being passed through in the form of retail prices lower than competitors can meet, thus creating a taxpayer subsidy for an unfair competitive situation. The Subcommittee intends to pursue this issue with appropriate law enforcement officials.

(J) Photovoltaic industry

On December 9, 1982, the Subcommittee held an oversight hearing to study the photovoltaics industry and the role of the federal government in fostering this emerging industry. The business of making electricity from sunlight and the manufacture of related products is expected to soon become a multibillion dollar international market, with sales concentrated initially in the Third World nations. U.S. small businesses have a tremendous stake in the race for this lucrative market as they are leaders in developing and marketing new applications for PV technology.

The Subcommittee is concerned because the U.S. Government is withdrawing its support from the American PV industry at the same time that several foreign governments have greatly increased their support for research, development and international marketing by PV firms located in those countries. Witnesses indicated that the current U.S. dominance of the world PV market is rapidly eroding and that this situation is likely to get worse unless federal government policies are reversed soon.

SUBCOMMITTEE ON TAX, ACCESS TO EQUITY CAPITAL AND BUSINESS OPPORTUNITIES

Small business tax and capital formation issues have gone through wide gyrations since the start of the 97th Congress on January 31, 1981. During 1981, the Congress enacted the Economic Recovery Tax Act of 1981, which was the largest tax cut in the Nation's history. It is a program which will amount to a tax reduction of approximately $748.8 billion by fiscal year 1986.

Due partially to the magnitude of the tax relief provided by ERTA, the Treasury faces a projected budget deficit this year of $112 billion and a possible $200 billion deficit by 1984. This has caused the political situation to change to such an extent that in just one year after ERTA, the Administration and the Congress have accomplished a tax increase measure of approximately $98 billion.

The change in direction of the tax debate is just one example of the structural transformations which the economy is undergoing. Besides the tax policy debate, there are also major changes occurring in the financial services industry. The way in which the individuals and businesses meet their financial needs will dramatically change.

(A) Proposed administration tax cuts and their effect on small business

On March 25, 26, and April 2, 1981, the Subcommittee conducted hearings on the administration's proposed tax program. The Reagan administration at that time proposed a 30-percent reduction in individual rates over three years and faster writeoffs of depreciable plant and equipment (the so-called 10–5–3 depreciation proposal).

Based on IRS statistics for 1975, small business does not greatly benefit from accelerated depreciation reform. For example, 92.9 percent of all firms are wholesalers, retailers, and other service sector firms. These firms are labor intensive, as opposed to capital intensive.

Various testimony did suggest that the 30 percent, three-year individual rate cut would help the many small businesses that are sole proprietors, partners and subchapter S corporations. There was concern, however, as to the equity and inflationary nature of the cuts. In addition, there were concerns raised as to the impact of the administration's program in light of the Federal Reserve Board's tight monetary policy. This latter policy must be seen in the light that smaller firms bear the brunt of high interest rates.

Given the uncertain impact of the administration's program, the purpose of the hearings was to insure that any tax package ultimately enacted by Congress would include an equitable share of relief for small business especially labor intensive firms.

In specific, the Subcommittee focused on promoting a mix of incentives which will benefit labor and capital intensive small businesses. Some of the proposals endorsed by Chairman Nowak and other members of the Subcommittee were as follows:

(1) A further tiering of the corporate rate from $100,000 to $250,000;

(2) A small business rollover provision;

(3) An increase in the amount of used equipment eligible for the investment tax credit from $100,000 to $200,000; and

(4) Inventory accounting reform (including a provision for cash accounting and LIFO simplification).

Another aspect of the tax rebate which the Subcommittee investigated in June 1981, was the impact of Federal estate and gift tax laws on small closely held businesses and family farms. The Subcommittee was concerned with the fact that large sums of money

were being spent on estate planning and life insurance. It was felt that such expenditures are an unproductive use of capital, which could otherwise be used for capital formation purposes and plant expansion.

The Subcommittee's push for tax simplification of inventory accounting methods was compared to the rationale underlying depreciation reform. Both types of reform aid capital formation by increasing the internal cash flow of a business. Inventory reform, however, helps the vast majority of smaller firms which are labor and inventory intensive.

Based on the Subcommittee's investigations, the Subcommittee chairman introduced H.R. 2319, the Inventory Simplification and Reform Tax Act of 1981. The bill simplifies the tax treatment of inventories by:

(1) Repealing the LIFO conformity requirement;

(2) Simplifying the implementation of the LIFO method. For smaller firms, this involves (among other provisions) a reduction of the number of inventory pools and for the use of published price indexes;

(3) Enactment of the cash method of accounting for specified small businesses; and

(4) An objective standard in the treatment of excess or obsolete inventory.

Although the Subcommittee would have preferred having small business receive a greater share of the relative tax reduction relief provided by the Economic Recovery Tax Act (ERTA) of 1981, as signed into law by the President, many of the Subcommittee's tax proposals were conceptually included in ERTA. The Subcommittee was particularly successful in having its recommendations on estate and gift tax reform and LIFO simplification included in both ERTA and in the Ways and Means alternative tax package.

The Subcommittee is very cognizant of the current economic and budget malaise facing the Nation. This will probably serve to mitigate any realistic push for further tax and capital formation relief for small business in the near term. Nevertheless, Chairman Nowak and other Subcommittee members realize that ERTA did not provide sufficient tax relief for noncapital intensive firms. Accordingly, in terms of long range economic policy, the Subcommittee will continue to advocate for a further reduction or tiering in the corporate rate, substantial simplification of the subchapter S provisions, a jobs tax credit (including a bonus provision to address the Nation's skilled labor shortages and its economically distressed citizens), enactment of a small business participating loan type mechanism, and for further inventory accounting simplification.

(B) Safe harbor leasing

One of the more controversial provisions of the Economic Recovery Tax Act was found to be the safe harbor leasing provisions. These provisions were included in ERTA for the purpose of extending the new depreciation benefits to businesses which do not have current taxable income. Some commentators contend that leasing is an important vehicle for increasing the internal cash flow of capital intensive small firms.

As a result of its receiving numerous letters from small business persons regarding the complexity and general unavailability of benefit from safe harbor leasing, the Subcommittee conducted an investigatory hearing on the subject on February 25, 1982.

Hearing testimony suggested that the statute effectively precludes small businesses from becoming lessors in such transactions. There was also concern as to the impact that the so-called "at risk" tax rules will have on any leasing transactions. Others raised a fundamental economic question as to whether financial institutions will, in fact, find small leasing deals profitable.

Due in large part to its projected revenue loss, the Congress made changes in the new tax act which will reduce the leasing tax benefit. This is a result of the Joint Committee on Taxation estimates that the revenue loss associated with the provisions will total $27 billion by 1986.

(C) Section 385: Debt-equity tax regulation

Concerned with the potential impact that the proposed section 385 "debt-equity" regulation would have on capital formation Chairman Nowak introduced (along with the cosponsorship of all the other Small Business Subcommittee Chairmen) in May, the Small Business Regulatory Relief Tax Act (H.R. 6429). The bill delays the effective date of the regulation from July 1, 1982, to July 1, 1984. Sensing the growing support for the measure, Treasury has recently agreed to delay implementation of the regulation until April 1, 1983.

The problem with the debt-equity regulation is its complexity and its impact of the ability of smaller firms to raise and generate capital. To the extent an individual makes a loan to his business, it is possible that the regulation (as drafted) would cause the loan to be reclassified as stock. In general, this situation could result in the interest paid by the business on its loan repayments not be deductible for tax purposes. This is significant to the small businessman because such a reclassification could potentially result in a dramatic reduction in the firm's cash flow. Accordingly, the delay until April 1, 1983 will allow Congress sufficient time to analyze its impact on small business capital formation.

(D) Job creation and the revitalization of small business

The Subcommittee on Tax conducted hearings on September 15 and 22, and October 14, 1981, to investigate the role of small business in job creation and urban revitalization. The three primary areas of discussion were: The need for viable economic incentives for distressed areas; the effectiveness of tax exempt small issue industrial bonds; and the impending skilled labor shortages facing the Nation.

The hearings were based on the premise that the future vitality and economic growth of the United States economy is dependent on small business. This premise is derived from the fact that small business is the linchpin of the job generation process and the major source of innovation in our economy.

With small business in the role of primary job creator and innovator, the Nation's economy is undergoing major structural changes. These changes are occurring both in terms of decline in

the general prosperity of the older urban centers and with respect to a change in the types of industries upon which the economy is based which represents a shift from a heavy industrial emphasis to an increasing concentration into the service industries dominated by smaller, more innovative firms.

Another important factor which must be considered in the discussion of job creation is the present Administration's shift in budgetary priorities from general domestic spending to a sharp increase in defense spending. The result of these shifts will have a major impact on the ability of the cities to provide adequate services, economic prosperity and full employment for urban residents. In addition, we will see an increase in the need to bolster our skilled labor sector to provide adequate manpower to service the growth of our military industrial base.

On the basis of all the evidence received and further investigation, the Subcommittee on Tax compiled a report entitled "Job Creation and the Revitalization of Small Business" (Report No. 97-434) which analyzes the major areas of focus of the hearings. The brief summary of the findings and recommendations are as follows:

1. Economic incentives to distressed areas

The basis for the concept of providing targeted tax incentives and deregulation will result in an increase in business investment and job creation in the Nation's older urban centers. Although this tax relief strategy promises to provide a measure of relief for areas suffering from long-term economic deterioration, they cannot and should not be considered as a cure for all our urban problems. In essence these tax proposals should not constitute an entire program for economic development but should be viewed as an integral component of a well balanced urban revitalization scheme.

a. *Infrastructure.*—In recent years the United States has found itself facing an infrastructure crisis which is not necessarily isolated to the older urban centers of the Nation. This crisis involves the ability of localities to maintain and improve proper sewer and transit systems (streets, bridges, etc.) including community support services (police, fire, etc.). In order to encourage the business community to locate and remain in our urban centers, a locality must provide a healthy and safe commercial environment which, at the very minimum, necessitates a viable infrastructure base.

b. *Human Capital.*—Another important area to consider in any urban development plan is a program to address the human capital needs of the community. Current Federal programs involving defense, transportation, water, air, and energy, have an important impact on economic development and job creation. In order to strengthen these programs there should be a provision designed to effectuate human capital development specifically focusing on assisting the unemployed and the underemployed by resolving the skilled labor shortage and training the unskilled with the basic aptitude to become productive workers. In this area, the focus should be on training workers so that they have the ability to fill specific positions in the private sector where there is the greatest need. In response to the realization that private sector placement should be emphasized, the Private Sector Initiative Program under Title VII of CETA was enacted in 1978, for the purpose of helping to eventu-

ally redirect CETA's emphasis on public sector employment toward private sector jobs. Under the Private Sector Initiative Program, private industry councils would be set up in communities to increase the employment and training opportunities in the private sector for the economically disadvantaged. Members of the council would be from private industry, labor, community based organizations, and local educational systems or programs. In general, these councils provide funding for private companies to defray the cost of training. It is this type of private sector oriented program that should be mentioned in any effort to implement a national employment policy.

c. *Financing.*—A crucial element of a coordinated plan of economic development is the availability of adequate financing for businesses locating in distressed areas. Although tax incentives are an important method for increasing the internal cash flow of a profitable firm and will undoubtedly encourage it to locate and expand in an urban development zone, tax benefits will provide little or no assistance to small firms which are in their start-up or early years of development. Therefore, a startup business will be forced to look elsewhere to meet its capital formation needs.

Securing adequate financing is generally more difficult for new and small firms than for established larger firms who are able to utilize tax benefits as well as alternative sources of financing such as the securities and commercial paper markets. To a large degree, new small businesses rely heavily on personal savings or personal loans from family and friends for their financing needs. In addition, high and volatile interest rates have rendered commercial financing unaffordable to many small businesses.

Therefore, to augment the tax incentive provisions of a distressed area proposal, there must be measures included which will provide firms (especially start-ups) or investors with funds for seed or working capital from external sources such as loans or grants.

d. *Tax Incentives.*—Tax incentives are an important element in the dynamics of job creation and the revitalization of distressed areas. In particular, targeted tax incentives are an important supplement to the human capital, infrastructure and seed capital needs of a local community. To the extent, therefore, that tax incentives are included in a well balanced plan for economic development, it must be understood that many tax benefits do not have the same impact on the cash flow of all types of businesses equally. This necessitates a distinction between those tax incentives which meet the capital formation needs of labor intensive small firms and those which meet the needs of capital intensive firms such as manufacturers.

The Subcommittee, therefore, found that a jobs' tax credit would be particularly beneficial to labor intensive firms in urban areas. In addition, an accelerated depreciation or direct expensing provision (including investment tax credit relief) would greatly aid the cash flow needs of capital intensive firms. Recognizing the limited amount of capital that small firms have at their disposal, the current limit on used equipment eligible for the investment tax credit is discriminatory against the small business person and should be raised.

Further, the Subcommittee found that a small business participating loan mechanism promises to offer a measure of relief for small businesses from their capital formation burdens.

In addition, the following tax reduction measures or proposals would be viable incentives for fostering economic development: The rehabilitation investment tax credit; a credit to offset a portion of the interest earned by a lender on a loan; and a provision encouraging the use of Employee Stock Ownership Plans (ESOPs) which could act as an inducement to increase the productivity of workers in distressed areas.

2. Tax exempt small issue industrial development bonds

In view of the widespread criticism concerning the industrial development bond (IDB) program, many opponents including the administration, have pushed for restrictions on the use of tax exempt small issue IDBs.

In analyzing the use of small issue IDBs, the Subcommittee concluded that small issues are an important economic development tool which can be utilized by States and local governments to stimulate business investment and employment. IDBs become an especially critical source of capital and means of economic development programs have been designated as prime targets for budgetary cutbacks. In particular, IDBs may be one of the few sources of low cost capital for small firms who are being eliminated from conventional financing by high and volatile interest rates.

3. Skilled labor shortage

The current high level of unemployment demonstrates a strange dichotomy in our Nation's employment base when measured against the acute shortage of skilled workers, which is attributable, in large degree, to the use of automation and technology. Employers, especially small business persons, often do not have the time or the capital to train employees to fill the deficiency of skilled workers. These critical shortages have contributed to the country's declining productivity, may undermine our position in world trade and may have a significant impact on our national defense capabilities.

Two possibilities for alleviating this problem are a specialized skills training tax credit for the specific industries facing a demonstrable shortage of skilled labor and a coordinated jobs training program utilizing input from the Government, education, and industry sectors of the community.

(E) Impact of high interest rates on small business capital formation

On October 15, 1981 and February 24, 1982, the Subcommittee held hearings to study the impact of interest rates on small business capital formation.

The Administration's plan for economic recovery includes tax cuts and budget cuts while the Federal Reserve Board strives for restrictive monetary targets to curb inflation. In the midst of these economic policies, the burden of high and volatile interest rates is rendering the prospects of an investment led economic resurgence extremely unlikely.

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There is widespread disagreement among economists, financial analysts, and others over the exact cause of the protracted high level of the interest rates. The most frequently mentioned reasons for the persistent high interest rates have been the Federal Reserve Board's tight monetary policy, the demand for credit by the Treasury due to the huge projected Federal deficits, and the inflationary expectations of the financial markets.

Although there may be a mystery relative to the cause of the high interest rates, there is little doubt as to their effect, which has resulted in prolonged economic stagnation marked by declining productivity, decreased sales and mounting inventories, rising business failures, and record level unemployment.

Nowhere in the economic spectrum has the prohibitive nature of these high rates been felt more than on the small business community. Small firms have traditionally relied almost exclusively on conventional credit as a source of outside financing. However, the current rates of interest have rendered this major source of funds virtually unavailable to the small business person.

It is true that our country is presently facing an economic crisis in which we must all share the burden of economic restraints. However, we cannot follow an economic course which threatens to irreparably harm the small business community, the cornerstone of the Nation's growth and vitality.

The devastating impact of these interest rates on the economy in general and small business specifically have pushed the small business community and others to demand that some immediate action be taken to ease their burdens. Evidence of this urgency was expressed by hearing witnesses who claim that there is growing support for urging the Federal Reserve Board to allow a modest increase in money growth to bring the interest rates down to a workable level. This action, they claim, would be the spur to economic recovery without subjecting the county to runaway inflation.

(F) Small Business Venture Capital Act of 1981

The Subcommittee held a hearing on March 24, 1982, on H.R. 5302, the Small Business Venture Capital Act of 1981. Chairman Nowak introduced the measure with Representative Dan Marriott, the Ranking Minority Member, to encourage greater utilization of the SBIC program as an important source of funding of venture capital for the small business community.

H.R. 5302 removes unnecessary limitations on the amount of leverage available to any one SBIC and will permit the SBIC's to include a restricted portion of the unrealized appreciation of their marketable securities for leveraging purposes. The bill also eliminates the overlapping and dual regulation of certain SBIC's which are subject to both the Investment Company Act of 1940 and the Small Business Investment Act of 1958.

Since 1958, when Congress recognized the need to develop an organized source of venture capital for the small firms, the SBIC program has displayed an exceptionally successful track record. For example, recent SBA statistics indicate that approximately 47,000 small companies have received over $4 billion in venture capital investment as well as invaluable management assistance since the establishment of the SBIC program.

A recent study demonstrates the cost efficiency of the SBIC program. According to this study, the Government spent only $4 million on the SBIC program in 1979. This Federal outlay appears slight when measured against the fact that the SBIC's or portfolio companies and their employees paid over $440 million in Federal taxes in that same year. The breakdown of these statistics indicates that the Government has received more than $110 in tax revenues for every dollar spent in this program.

Greater utilization of the SBIC program is one important way of dealing with the current recessionary trends in the economy. In particular, it is one of the best incentives for spurring growth and expansion of small business in the creation of new jobs.

(G) Bank deregulation and its impact on small business lending

On May 19 and 20, 1982, the Subcommittee held hearings to investigate the current status of proposed banking deregulation and its impact on small business lending.

Recent developments in the financial service business and proposed measures to deregulate the banking industry could have a profound effect on the basic structure of the traditional lending practices in this country. In view of this trend, it is important to examine the effect of these changes on the availability of credit to the small business community.

As a general rule, small business is experiencing difficulty in securing debt and equity capital. For instance, small firms, to a large degree, have been denied access to the bond market and the commercial paper market which are significant sources of debt capital for larger enterprises. Therefore, small business has consistently relied on commercial bank credit to meet its financing needs. In fact, a recent survey by the Interagency Task Force on Small Business Finance indicates that commercial banks believe that they provide 72 percent of all small business total indebtedness. In addition, the same survey points out "small and medium-sized banks provide the bulk of the dollar volume of bank loans to small business."

Since the small business community is heavily dependent on bank financing, changes in the basic structure of financial services could have a profound effect on the small business capital formation process. It is important, therefore, to examine briefly some of the recent developments in the financial service industry.

The current high and volatile interest rates have left thrift institutions on the verge of total collapse, as evidenced by a recent report in *Nation's Business,* which claims that savings and loan institutions losses totaled $5 billion last year and mergers are responsible for the elimination of approximately one savings and loan a day. The basic reason for the decline of the savings and loans is that they are being forced to pay more for funds that they are receiving from their long-term, low-yield mortgage portfolios, many of which were negotiated prior to the advent of flexible mortgage instruments.

Commercial banks are also experiencing difficulties which are partly attributable to the current high interest rates, since Regulation Q limits the amount of interest that can be paid by insured commercial banks, mutual saving and savings and loan associ-

ations. Although Congress has responded to this problem through the Depository Institutions Deregulation and Monetary Control Act of 1980, which establishes a committee to effectuate a gradual phase out of the interest rates ceiling, commercial banks continue to receive competitive pressure from such creative financial instruments as Money Market Mutual Funds.

Money Market Mutual Funds could be the greatest source of financial drain on the banking industry's resources. During times of high interest rates and high inflation, consumers are searching for ways to get the greatest return on their savings dollars. Although banks and savings and loans can now offer higher interest rates on some long-term instruments, money market funds may still be more attractive to customers because they offer a high yield plus a greater degree of liquidity.

Another major threat to the financial position of many banks is the rise of the financial service supermarkets such as Sears, American Express, and Merrill Lynch. Basically, these unregulated financial service operations, in addition to being able to provide customers with a high return and flexibility on their investment, are able to provide the customer with the convenience of a vast array of investment services.

On the other hand, banks are barred from certain markets and products by Federal regulation.

Even the banking industry itself is sharply divided on the issue of bank deregulation. Many large banks, for example, would advocate the total deregulation, letting the competitive free market determine the survival of these institutions. However, many small and medium-sized banks argue that total deregulation could lead to obliteration of local community based banks through merger and acquisition, thereby eliminating a major source of financing for farmers, small businesses, and local customers.

In addition, it should be noted that the function of these hearings was not to advocate a position for or against deregulation of the banking industry, but to investigate the future availability of adequate financing for the small business community under a regulated or deregulated banking industry scenario.

Some of the more significant recommendations presented by witnesses at the hearings are as follows:

(1) In order to sufficiently assess small business financing activity and needs, a statistical data base should be developed to collect information on the flow of funds to small business so that it is possible to effectively monitor the impact of competition and deregulation in the upcoming years.

(2) An organized regulatory environment should be developed for the financial service industry and that regulation should be even handed across all segments of the industry.

(3) Although many commentators contend that existing antitrust laws are sufficient to monitor any anticompetitive practices which may occur in the financial service industry as a result of deregulation, especially with regard to the liberalization of nationwide branching, there should be additional safeguards designed to complement the existing antitrust laws. These safeguards should include limits on regions or product markets to be entered, or limits on the size of the market share of banks which might be acquired.

(H) Tax incentives and small business exports

On September 16, 1982, the Subcommittee conducted a hearing on Tax Incentives and Small Business Exports to investigate the utilization by small business of the so-called domestic international sales corporation (DISC) tax incentive and to explore the underlying rationale for providing tax incentives for exports generally.

For purposes of the Internal Revenue Code, a DISC is a domestic corporation which generally derives 95 percent of its gross receipts from export related activities and has 95 percent of its assets involved in exporting. Those DISCs that increase export sales over a base period amount are generally permitted to defer the tax on 50 percent of export income. With respect to the economic impact of these provisions, there were 7,208 active DISCs in 1979 with total export gross receipts of $99.6 billion.

Witnesses were encouraged by the potential impact that increased exporting could have on the growth of our workforce. This is significant in the light that small business creates about 80 percent of all the net new jobs in the United States. Further by fostering the exports of small business, the Nation will be utilizing an important avenue for broadening its economic base. It would provide our cities with a hedge against general downturns in the economy, as well as a vehicle for increasing business opportunities for other domestic industries and suppliers.

The Reagan administration and Congress should closely analyze the current market forces existing in international trade. We must stand ready to provide American firms and small business, in particular, with the proper tools to compete in world markets.

With respect to the simmering debate over the modification or replacement of DISC, two points stand out: First, we must work towards the objective of providing incentives that truly increase our level of exports abroad and which create jobs at home. Second, we must recognize that small and medium sized firms have a critical stake in this debate.

The Subcommittee held a joint hearing with the Senate Small Business Committee on December 1, 1982, regarding the recommendations of the Securities and Exchange Commission on the Government-Business Forum on Small Business Capital Formation. The SEC Forum, which took place over a period of two and one-half days in September, was attended by nearly 200 spirited representatives of small business, the professions and government.

While attending the September Conference, Chairman Nowak was extremely impressed by the seriousness of debate among the participants. The attendees were well versed and informed as to the current capital formation problems facing small business. In particular, the Forum participants clearly understood the need to find ways to increase the external and internal cash flow of smaller firms.

The Forum participants approved 37 recommendations, which were distributed among the following eight topics:

A. Developing Incentives to Institutional Investors and Others to Invest in Small Business.

B. Relaxing ERISA and Similar Regulatory Restrictions to Encourage Investment in Small Business.

C. Reducing Costs Associated With Securities Regulation.

D. Uniform Federal-State Securities Regulation.

E. Changes in Corporate Tax Rates and Brackets to Assist Small Business Capital Formation and Retention.

F. Changes in the Tax Treatment of Capital Gains to Provide a Stimulus to Capital Formation, Particularly for Smaller Businesses.

G. Additional Tax Modifications to Assist Small Business Capital Formation and Retention.

Federal Small Business Credit Assistance Programs.

The SEC Forum recommendations will help the Subcommittee formulate an agenda on small business capital formation for the next Congress. In particular, the Subcommittee anticipates introducing an omnibus small business bill to implement many of the proposals.

SUBCOMMITTEE ON EXPORT OPPORTUNITIES AND SPECIAL SMALL BUSINESS PROBLEMS

(A) Oversight of the Regulatory Flexibility Act

The Subcommittee has held several hearings to determine whether or not Federal agencies have been adhering to the requirements of the Reg Flex Act of 1980. On September 22, the Subcommittee held its final hearing on the subject. In particular, the Subcommittee will focus on the non-compliance of the Department of Defense and the Internal Revenue Service.

After the hearings have concluded the Subcommittee will issue a report with recommendations on possible improvements to the act. A September 22 hearing on Oversight of the Regulatory Flexibility Act was the final oversight hearing on the Regulatory Flexibility Act. Witnesses included representatives of the Small Business Administration's Chief Counsel for Advocacy, the Department of Defense, the Internal Revenue Service, the National Small Business Association, and the National Federation of Independent Business.

(B) Federal assistance to small business

The Subcommittee has held several hearings to determine what various Federal agencies are doing for small business. These hearings concluded in September. On September 22, the Subcommittee continued its series of hearings on federal assistance to small business. There are many federal offices which have been set up to provide specific assistance to small business. In past hearings, the Subcommittee heard about a number of such programs. On September 22, the Subcommittee heard testimony from the Overseas Private Investment Corporation.

(C) Federal procurement of food products

The Subcommittee held five days of hearings on the food procurement practices of the Department of Agriculture focusing on the school lunch program. A report will be issued prior to the end of the Congress.

(D) Exports

The Subcommittee has been working with the various Federal agencies which affect exports to promote more small business participation in the export area. On September 21, the Subcommittee will hold an all-encompassing hearing on the subject. The hearing will be a culmination of a six-month long series of hearings held across the Nation by the Chamber of Commerce of the United States.

A field hearing on the subject will be held on October 1 in Toledo, Ohio. At a September 21 hearing on Export Promotion and Small Business the Subcommittee looked for ways to help small business owners increase their export opportunities and improve their access to the world marketplace. During the summer of 1982, the U.S. Chamber of Commerce held a series of regional conferences to listen to small business men and women give their views to help us achieve our goal. The September 21 hearing was a culmination of these conferences.

(E) Other issues

The Subcommitee has been involved in several other issues which include:

(a) The continued effort by the Federal Trade Commission to regulate the funeral industry;

(b) Efforts to increase Federal competition with small business contained in the Defense Authorization bills;

(c) Oversight of Federal regulations governing the Prompt Payment Act of 1981;

(d) An attempt by the IRS to exempt itself from the Paperwork Reduction Act of 1980; and

(e) Attempts by several agencies to exempt themselves from both the Regulatory Flexibility Act of 1980 and the Paperwork Reduction Act of 1980.

(f) The Subcommittee's chairman announced that the Postal Service will issue a commemorative envelope for small business in 1984.

(g) The Subcommittee chairman served as vice-chairman of the Florida Governor's Conference on Small Business.

APPENDIX A

Public Law 97-35
97th Congress

An Act

To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

Aug. 13, 1981
[H.R. 3982]

SHORT TITLE

SECTION 1. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1981".

Omnibus Budget Reconciliation Act of 1981

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Title XXIII. Public assistance programs.
Title XXIV. Unemployment compensation.
Title XXV. Trade adjustment assistance.
Title XXVI. Low-income home energy assistance.
Title XXVII. Health professions.

PURPOSE

SEC. 2. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives and the Senate pursuant to directions contained in part A of title III of the first concurrent resolution on the budget for the fiscal year 1982 (H. Con. Res. 115, 97th Congress), and pursuant to the reconciliation requirements which were imposed by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974.

31 USC 1331.

TITLE XIX—SMALL BUSINESS

Small Business Budget Reconciliation and Loan Consolidation/ Improvement Act of 1981.
15 USC 631 note.

SEC. 1901. This title may be cited as the "Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981".

SEC. 1902. Subsection (a) of section 7 of the Small Business Act is amended to read as follows:

15 USC 636.

"(a) The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

Loan authority limitations.

"(1) No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

"(2) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:

"(A) not less than 90 per centum of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $100,000; and

"(B) subject to the limitation in paragraph (3)—

"(i) not less than 70 per centum nor more than 90 per centum of the financing outstanding at the time of disbursement if such financing exceeds $100,000 but is less than $714,285, and

"(ii) less than 70 per centum of the financing outstanding at the time of disbursement if such financing exceeds $714,285;

Provided, That the Administration shall not use the per centum of guarantee requested as a criterion to establish priorities in approving guarantee requests nor shall the Administration reduce the per centum guaranteed to less than 90 per centum pursuant to subparagraph (B) other than by a determination made on each application.

"(3) No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $500,000: *Provided,* That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.

"(4) The rate of interest on financings made on a deferred basis shall be legal and reasonable but shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided,* That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

"(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

"(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That—

"(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

"(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining 'sound value' shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further,* That such status need

not be as sound as that required for general loans under this subsection; and

"(C) the Administration shall not decline to participate in a loan on a deferred basis under this subsection solely because such loan will be used to refinance all or any part of the existing indebtedness of a small business concern, unless the Administration determines that—

"(i) the holder of such existing indebtedness is in a position likely to sustain a loss if such refinancing is not provided, and

"(ii) if the Administration provides such refinancing through an agreement to participate on a deferred basis, it will be in a position likely to sustain part or all of any loss which would have otherwise been sustained by the holder of the original indebtedness: *Provided further,* That the Administration may decline to approve such refinancing if it determines that the loan will not benefit the small business concern.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further,* That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

"(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

"(8)(A) Any loan made under the authority of this subsection by the Administration in cooperation with a bank or other lending institution through an agreement to participate on a deferred basis, may, upon the concurrence of the Administration, borrower and such bank or institution, have the term of such loan extended or such loan refinanced with an extension of its term: *Provided,* That the aggregate term of such extended or refinanced loan does not exceed the term permitted pursuant to paragraph (5): *And provided further,* That such extended loans, or refinancings shall be repaid in equal installments of principal and interest.

"(B) An additional service fee not exceeding 1 per centum of the outstanding amount of the principal may be paid by the borrower to the lender in consideration for such lender extending the term or refinancing of such borrower's indebtedness if such extension or refinancing results in the term of such indebtedness exceeding ten years.

"(C) The authority provided in this paragraph shall not be construed to otherwise limit the authority of the Administration to set terms and conditions of the loan.

"(9) The Administration may provide loans under this subsection to finance residential or commerical construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land.

"(10) The Administration may provide loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

"(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

15 USC 631.

"(12) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: *Provided, however,* That such loan proceeds shall not be used primarily for research and development.

"(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

15 USC 695.

"(14) The Administration under this subsection may provide extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however,* That no such extension or revolving line of credit may be made for a period or periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.

"(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

"(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

"(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

26 USC 401.

"(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated, and

"(iii) there will be adequate management to assure management expertise and continuity.

"(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

"(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

"(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration.". Report to Congress.

SEC. 1903. Section 3 of the Small Business Act is amended by adding thereto the following subsections: Definitions. 15 USC 632.

"(d) For purposes of section 7 of this Act, the term 'qualified Indian tribe' means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern. 15 USC 636. 25 USC 450b.

"(e) For purposes of section 7 of this Act, the term 'public or private organization for the handicapped' means one—

"(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

"(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

"(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

"(f) For purposes of section 7 of this Act, the term 'handicapped individual' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

"(g) For purposes of section 7 of this Act, the term 'energy measures' includes—

"(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

"(2) photovoltaic cells and related equipment;

"(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

"(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

"(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

"(6) hydroelectric power equipment;

"(7) wind energy conversion equipment; and

"(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

"(h) For purposes of this Act, the term 'credit elsewhere' means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

15 USC 636. "(i) For purposes of section 7 of this Act, the term 'homeowners' includes owners and lessees of residential property and also includes personal property.".

Report to congressional committees.
15 USC 639. SEC. 1904. Section 10(b) of the Small Business Act is amended by striking out "subsection" and all that follows and by inserting in lieu thereof, "this Act. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 7(a) and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.".

15 USC 631 note. SEC. 1905. Section 20 of the Small Business Act is amended by striking out all after subsection (j) and inserting the following:

Loan program expenditure levels. "(k) The following program levels are authorized for fiscal year 1982:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

15 USC 697. "(2) For the programs authorized by 7(a) of this Act, and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $250,000,000 in loans as provided in paragraph (13) and guarantees of debentures as proivded in section 503.

15 USC 681. "(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $35,000,000 in direct purchase of debentures and preferred securities and to make $160,000,000 in guarantees of debentures.

15 USC 694a. "(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

15 USC 636. "(5) For the program authorized by section 7(b)(3) of this Act, the Administration shall not enter into any loans, guarantees, or other obligations or commitments.

15 USC 694-1, 694-2. "(6) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $250,000,000.

"(7) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7 (b)(2) of this Act; and there are authorized to

be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

"(l) There are authorized to be appropriated to the Administration for fiscal year 1982, $623,000,000. Of such sum, $362,000,000 shall be available for the purpose of carrying out the programs referred to in subsection (k), paragraphs (1) through (3); $30,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; $4,000,000 shall be available for the purpose of carrying out the provisions of section 403 of the Small Business Investment Act of 1958; and $227,000,000 shall be available for salaries and expenses of the Administration of which amount— Appropriation authorization. 15 USC 694c. 15 USC 694.

"(1) $12,526,000 shall be available for procurement and technical assistance; of which amount not less than $2,318,000 shall be available for technical assistance, and of this amount not less than $903,000 shall be used to pay for the continued development of a procurement automated source system, and not less than $175,000 shall be used to develop and maintain technology assistance centers which shall have direct or indirect access to a minimum of thirty technology data banks to define the technology problems or needs of small businesses by searching technology data banks or other sources to locate, obtain and interpret the appropriate technology for such small business.

"(2) $26,638,000 shall be available for management assistance of which amount not less than $1,214,000 shall be used to sustain the small business export development program and to employ not less than seventeen staff people for the Office of International Trade, ten of whom shall serve as export development specialists with each of the Administration's regional offices being assigned one such specialist.

"(3) $8,000,000 shall be available for economic research and analysis and advocacy, of which amount not less than $2,420,000 shall be used to employ at least sixty-nine staff people for the office of the Chief Counsel for Advocacy to carry out research and those functions prescribed by Public Law 94-305; not less than $1,400,000 shall be used to develop an external small business data bank and small business index; not less than $1,350,000 shall be used for research; and not less than $1,000,000 shall be used to pay for development and maintenance of an indicative small business data base comprised of names and addresses and related information. 15 USC 636 note.

"(4) $30,250,000 shall be available for the Office of Minority Small Business and Capital Ownership Development, $13,655,000 of which shall be used to carry out those functions, including administrative expenses, prescribed by section 7(j) of this Act. 15 USC 636.

"(5) $10,546,000 shall be available for program evaluation and data management with priority given to the development of an automated internal Administration management data base, to the enhancement of the Administration's document tracking system, and to the installation of terminals in Administration field offices.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for carrying out the provisions and purposes of the small business development center program in section 21. 15 USC 631 note.

Funds, transfer.
15 USC 631 note.

"(m) The Administrator may transfer no more than 10 per centum of each of the total levels for salaries and expenses authorized in paragraphs (1) through (5) of section 20(l) of this Act: *Provided, however,* That no level authorized in such paragraphs may be increased more than 20 per centum by any such transfers.

Program expenditure levels.
15 USC 636.

"(n) The following program levels are authorized for fiscal year 1983:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

15 USC 697.

"(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

15 USC 681.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $35,000,000 in direct purchases of debentures and preferred securities and to make $160,000,000 in guarantees of debentures.

15 USC 694a.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

"(5) For the program authorized by section 7(b)(3) of this Act, the Administration shall not enter into any loans, guarantees, or other obligations or commitments.

15 USC 694-1, 694-2.

"(6) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $250,000,000.

"(7) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

Appropriation authorization.
15 USC 694c.
15 USC 694.

"(o) There are authorized to be appropriated to the Administration for fiscal year 1983, $675,000,000. Of such sum, $408,000,000 shall be available for the purpose of carrying out the programs referred to in subsection (n), paragraphs (1) through (3); $30,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; $4,000,000 shall be available for the purpose of carrying out the provisions of section 403 of the Small Business Investment Act of 1958; and $233,000,000 shall be available for salaries and expenses of the Administration of which amount—

"(1) $12,526,000 shall be available for procurement and technical assistance; of which amount not less than $2,318,000 shall be available for technical assistance, and of this amount not less than $903,000 shall be used to pay for the continued development

of a procurement automated source system, and not less than $175,000 shall be used to develop and maintain technology assistance centers which shall have direct or indirect access to a minimum of thirty technology data banks to define the technology problems or needs of small businesses by searching technology data banks or other sources to locate, obtain and interpret the appropriate technology for such small business.

"(2) $29,638,000 shall be available for management assistance of which amount not less than $1,214,000 shall be used to sustain the small business export development program and to employ not less than seventeen staff people for the Office of International Trade, ten of whom shall serve as export development specialists with each of the Administration's regional offices being assigned one such specialist.

"(3) $8,000,000 shall be available for economic research and analysis and advocacy, of which amount not less than $2,420,000 shall be used to employ at least sixty-nine staff people for the office of the Chief Counsel for Advocacy to carry out research and those functions prescribed by Public Law 94-305; not less than $1,400,000 shall be used to develop an external small business data bank and small business index; not less than $1,350,000 shall be used for research; and not less than $1,000,000 shall be used to pay for development and maintenance of an indicative small business data base comprised of names and addresses and related information. 15 USC 636 note.

"(4) $30,250,000 shall be available for the Office of Minority Small Business and Capital Ownership Development, $13,655,000 of which shall be used to carry out those functions, including administrative expenses, prescribed by section 7(j) of this Act. 15 USC 636.

"(5) $10,546,000 shall be available for program evaluation and data management with priority given to the development of an automated internal Administration management data base, to the enhancement of the Administration's document tracking system, and to the installation of terminals in Administration field offices.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for carrying out the provisions and purposes of the Small business development center program in section 21. 15 USC 631 note.

"(p) The Administrator may transfer no more than 10 per centum of each of the total levels for salaries and expenses authorized in paragraphs (1) through (5) of section 20(o) of this Act: *Provided, however,* That no level authorized in such paragraphs may be increased more than 20 per centum by any such transfers. Funds, transfer. 15 USC 631 note.

"(q) The following program levels are authorized for fiscal year 1984: Loan program expenditure levels.

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

"(2) For the programs authorized by 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as 15 USC 697.

provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

15 USC 697.

"(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $35,000,000 in direct purchases of debentures and preferred securities and to make $160,000,000 in guarantees of debentures.

15 USC 681.

"(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,400,000,000.

15 USC 694a.

"(5) For the program authorized by section 7(b)(3) of this Act, the Administration shall not enter into any loans, guarantees, or other obligations or commitments.

15 USC 636.

"(6) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $250,000,000.

15 USC 694-1, 694-2.

"(7) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

Appropriation authorization.

"(r) There are authorized to be appropriated to the Administration for fiscal year 1984, $804,000,000. Of such sum, $531,000,000 shall be available for the purpose of carrying out the programs referred to in subsection (q), paragraphs (1) through (3); $30,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; $4,000,000 shall be available for the purpose of carrying out the provisions of section 403 of the Small Business Investment Act of 1958; and $239,000,000 shall be available for salaries and expenses of the Administration of which amount—

15 USC 694c.

15 USC 694.

"(1) $12,526,000 shall be available for procurement and technical assistance; of which amount not less than $2,318,000 shall be available for technical assistance, and of this amount not less than $903,000 shall be used to pay for the continued development of a procurement automated source system, and not less than $175,000 shall be used to develop and maintain technology assistance centers which shall have direct or indirect access to a minimum of thirty technology data banks to define the technology problems or needs of small businesses by searching technology data banks or other sources to locate, obtain and interpret the appropriate technology for such small business.

"(2) $32,138,000 shall be available for management assistance of which amount not less than $1,214,000 shall be used to sustain the small business export development program and to employ not less than seventeen staff people for the Office of International Trade, ten of whom shall serve as export development specialists with each of the Administration's regional offices being assigned one such specialist.

"(3) $8,000,000 shall be available for economic research and analysis and advocacy, of which amount not less than $2,420,000 shall be used to employ at least sixty-nine staff people for the office of the Chief Counsel for Advocacy to carry out research and those functions prescribed by Public Law 94-305; not less than

15 USC 636 note.

$1,400,000 shall be used to develop an external small business data bank and small business index; not less than $1,350,000 shall be used for research; and not less than $1,000,000 shall be used to pay for development and maintenance of an indicative small business data base comprised of names and addresses and related information.

"(4) $30,250,000 shall be available for the Office of Minority Small Business and Capital Ownership Development, $13,655,000 of which shall be used to carry out those functions, including administrative expenses, prescribed by section 7(j) of this Act.

"(5) $10,546,000 shall be available for program evaluation and data management with priority given to the development of an automated internal Administration management data base, to the enhancement of the Administration's document tracking system, and to the installation of terminals in Administration field offices.

"(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for carrying out the provisions and purposes of the small business development center program in section 21.

15 USC 631 note.

"(s) The Administrator may transfer no more than 10 per centum of each of the total levels for salaries and expenses authorized in paragraphs (1) through (5) of section 20(r) of this Act: *Provided, however,* That no level authorized in such paragraphs may be increased more than 20 per centum by any such transfers.".

Funds, transfer.

15 USC 631 note.

SEC. 1906. Section 20(h) of the Small Business Act is hereby amended by striking from paragraph (9) the figure "$110,000,000" and by inserting "$180,000,000".

15 USC 631 note.

SEC. 1907. Not later than February 28, 1984, and February 28, 1985, the Small Business Administration shall submit to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report which shall contain—

Report to congressional committees.

15 USC 631 note.

(1) with respect to section 7(a)(5) of the Small Business Act—

15 USC 636.

(A) the aggregate number, dollar value, and default rate of all loans (other than for the acquisition of real property or for construction) having a maturity not in excess of ten years, and the aggregate number, dollar value, and default rate of all loans made for the purpose of acquiring real property or for construction having a maturity of between ten years and twenty years plus such additional period as is estimated may be required to complete such construction; and

(B) the aggregate number, dollar value, and default rate of all loans (other than for the acquisition of real property or for construction) made since the effective date of this section, having a maturity in excess of ten years, and the aggregate number, dollar value, and default rate of all loans made for the purpose of acquiring real property or for construction made since the effective date of this section, having a maturity in excess of twenty years plus such additional period as is estimated may be required to complete such construction;

(2) with respect to section 7(a)(8)(A) of the Small Business Act—

(A) the aggregate number, dollar value, and default rate of loans extended or refinanced pursuant to such section; and

(B) the average term of loans before such extension or refinancing and the average term of such loans after such extension or refinancing; and

15 USC 636. (3) with respect to section 7(a)(6)(C) of the Small Business Act, the aggregate number, dollar value, and default rate of all loans refinanced pursuant to such provision.

15 USC 633. SEC. 1908. Section 4(c)(1)(B) of the Small Business Act is amended by deleting "7(e), 7(h), 7(i), 7(l),".

15 USC 696. SEC. 1909. Section 502 of the Small Business Investment Act of 1958 is amended by striking paragraphs (1) and (5) and by renumbering paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

SEC. 1910. Sections 7(a)(6)(C) and 7(a)(8) of the Small Business Act as enacted herein are repealed October 1, 1985.

Disaster loans. SEC. 1911. Sections 7(b)(1) and 7(b)(2) of the Small Business Act are amended to read as follows:

"(b) The Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

"(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of floods, riots or civil disorders, or other catastrophes: *Provided,* That such damage or destruction is not compensated for by insurance or otherwise;

"(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided,* That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise;

"(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster, if the Administration determines that the concern has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

"(A) a major disaster, as determined by the President under the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950, as amended (42 U.S.C. 1855–1855g); or

"(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961); or

"(C) a disaster, as determined by the Administrator of the Small Business Administration; or

"(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not

available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued. *Provided,* That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

Interest rates on Federal loans. 15 USC 636.

SEC. 1912. Section 7(c) of the Small Business Act is amended by adding the following:

"(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

"(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

"(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

"(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

"(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph (1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: *Provided,* That no loan under paragraphs (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which

case the Administration, in its discretion, may waive the $500,000 limitation.".

Disaster loans.
Ante, p. 778.

SEC. 1913. (a) Section 7(b) of the Small Business Act is amended by striking out paragraphs (3) through (9) and inserting in lieu thereof the following:

"(3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: *Provided*, That the maximum loan made to any small business concern under this paragraph shall not exceed $500,000 and the amount thereof shall be based solely on a determination made on each application: *Provided further*, That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere.";

15 USC 633.

(b) Section 4(c)(1) of the Small Business Act is amended by striking all of subparagraph (A) after "7(b)(3)," and by inserting in lieu thereof "and 7(c)(2) of this Act; and".

(c) Section 7(g) of the Small Business Act is hereby repealed.

SEC. 1914. Section 7(c)(3) of the Small Business Act is amended by striking "to October 1, 1983" and by inserting "the effective date of this Act".

SEC. 1915. Section 4(c)(5)(B)(ii) of the Small Business Act is amended by striking all of the first sentence after "are made" and by inserting "from amounts appropriated for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981.".

15 USC 636 note.

SEC. 1916. (a) Notwithstanding section 5(b)(6) of the Small Business Act, or any other provision of law, any business concern applicant for assistance made pursuant to paragraph (1), (2), or (4) of subsection 7(b) of the Small Business Act whose application was received but not approved by the Small Business Administration on or before March 19, 1981, shall be offered loan assistance by the Small Business Administration as provided in this section.

(b) The Small Business Administration is specifically directed to reconsider and act upon any such application and to make, remake, obligate, reobligate, commit or recommit such financing as provided herein.

(c) If the applicant was a business concern able to obtain credit elsewhere, the terms and conditions shall be those specified in section 7(b)(3) of the Small Business Act; but if the Administrator determines that imposition of these provisions would impose a

substantial hardship on the applicant, he may, in his discretion on a case-by-case basis waive these provisions and provide assistance in accord with rules and regulations in effect for the date the disaster commenced for applicants able to secure credit elsewhere. If the applicant was a business concern unable to obtain credit elsewhere, or was an applicant under sections 7(b)(2) or 7(b)(4) of the Small Business Act, the terms and conditions shall be those in effect for such applicants on the date such application was first received. As used herein, the term "credit elsewhere" shall have the meaning prescribed by the Small Business Act as amended herein. 15 USC 636.

SEC. 1917. Section 231 of the Disaster Relief Act is hereby repealed. Repeal.

SEC. 1918. Sections 1908, 1909, and 1913 of this title shall be effective October 1, 1981, and section 1910 of this title shall be effective as provided therein. All other provisions of this title shall be effective immediately but shall not affect any financing made, obligated, or committed under the Small Business Act or the Small Business Investment Act of 1958 prior to the effective date hereof. 15 USC 636a. Effective dates. 15 USC 631 note. 15 USC 631 note, 661 note.

APPENDIX B

Public Law 97-219
97th Congress

An Act

To amend the Small Business Act to strengthen the role of the small, innovative firms in federally funded research and development, and to utilize Federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy.

July 22, 1982
[S. 881]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Innovation Development Act of 1982.
15 USC 631 note.

SECTION 1. This Act may be cited as the "Small Business Innovation Development Act of 1982".

15 USC 638 note.

SEC. 2. (a) The Congress finds that—

(1) technological innovation creates jobs, increases productivity, competition, and economic growth, and is a valuable counterforce to inflation and the United States balance-of-payments deficit;

(2) while small business is the principal source of significant innovations in the Nation, the vast majority of federally funded research and development is conducted by large businesses, universities, and Government laboratories; and

(3) small businesses are among the most cost-effective performers of research and development and are particularly capable of developing research and development results into new products.

(b) Therefore, the purposes of the Act are—

(1) to stimulate technological innovation;

(2) to use small business to meet Federal research and development needs;

(3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and

(4) to increase private sector commercialization innovations derived from Federal research and development.

15 USC 638.

SEC. 3. Section 9(b) of the Small Business Act is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs;

"(5) to coordinate with participating agencies a schedule for release of SBIR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

"(6) to independently survey and monitor the operation of SBIR programs within participating Federal agencies; and

Report to congressional committees.

"(7) to report not less than annually to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives on the SBIR programs

of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR programs.".

15 USC 638.

SEC. 4. Section 9 of the Small Business Act is amended by adding at the end thereof the following new subsections:

Definitions.

"(e) For the purpose of this section—

"(1) the term 'extramural budget' means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;

"(2) the term 'Federal agency' means an executive agency as defined in section 105 of title 5, United States Code, or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

"(3) the term 'funding agreement' means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

"(4) the term 'Small Business Innovation Research Program' or 'SBIR' means a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having—

"(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas submitted pursuant to SBIR program solicitations;

"(B) a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and

"(C) where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and

"(5) the term 'research' or 'research and development' means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research or research and development, budget.

"(f)(1) Each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for

fiscal year 1982, or any fiscal year thereafter, shall expend not less than 0.2 per centum of its extramural budget in fiscal year 1983 or in such subsequent fiscal year as the agency has such budget, not less than 0.6 per centum of such budget in the second fiscal year thereafter, not less than 1 per centum of such budget in the third fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: *Provided,* That any Federal agency which has an extramural budget for research or research and development in excess of $10,000,000,000 for fiscal year 1982 shall expend not less than 0.1 per centum of its extramural budget in fiscal year 1983, not less than 0.3 per centum of such budget in the second fiscal year thereafter, not less than 0.5 per centum of such budget in the third fiscal year thereafter, not less than 1 per centum of such budget in the fourth fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: *Provided further,* That a Federal agency shall not make available for the purpose of meeting the requirements of this subsection an amount of its extramural budget for basic research or research and development which exceeds the percentages specified herein. Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than under a small business innovation research program shall not be counted as meeting any portion of the percentage requirements of this subsection.

"(2) Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department.

"(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act and regulations issued hereunder— Small business innovation research program, requirements.

"(1) unilaterally determine categories of projects to be in its SBIR program;

"(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

"(3) unilaterally receive and evaluate proposals resulting from SBIR proposals;

"(4) unilaterally select awardees for its SBIR funding agreements;

"(5) administer its own SBIR funding agreements (or delegate such administration to another agency);

"(6) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements; and

"(7) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy.

"(h) In addition to the requirements of subsection (f), each Federal agency which has a budget for research or research and develop-

ment in excess of $20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

"(i) Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards pursuant to grants, contracts, or cooperative agreements over $10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

Policy directives.

"(j) The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of the enactment of the Small Business Innovation Development Act of 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

"(1) simplified, standardized, and timely SBIR solicitations;

"(2) a simplified, standardized funding process which provides for (A) the timely receipt and review of proposals; (B) outside peer review for at least phase two proposals, if appropriate; (C) protection of proprietary information provided in proposals; (D) selection of awardees; (E) retention of rights in data generated in the performance of the contract by the small business concern; (F) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (G) cost sharing; and (H) cost principles and payment schedules;

"(3) exemptions from the regulations under paragraph (2) if national security or intelligence functions clearly would be jeopardized;

"(4) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program; and

"(5) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy.

"(k) The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

"(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and

"(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate.". Report to congressional committees.

SEC. 5. Effective October 1, 1988, paragraphs (4) through (7) of section 9(b) of the Small Business Act (as added by section 3) and subsections (e) through (k) of section 9 of the Small Business Act (as added by section 4) are repealed. 15 USC 638.

SEC. 6. The Comptroller General shall, not more than five years after the date of enactment of this Act, transmit a report to the Senate and the House of Representatives on the implementation of, and nature of research conducted under this Act, including the judgments of the heads of Departments and agencies as to the effect of this Act on research programs. Report to Congress. 15 USC 638 note.

Approved July 22, 1982.

LEGISLATIVE HISTORY—S. 881 (H.R. 4326):

HOUSE REPORTS: No. 97-349, Pts. I-7 accompanying H. R. 4326 (Comms. on Small Business; Energy and Commerce; Veterans' Affairs; Science and Technology; Foreign Affairs; Armed Services; and Permanent Select Committee on Intelligence), respectively.

SENATE REPORT No. 97-194 (Comm. on Small Business).

CONGRESSIONAL RECORD:

Vol. 127 (1981): Dec. 7, 8, considered and passed Senate.

Vol. 128 (1982): June 17, 22, 23, H.R. 4326 considered and passed House; passage vacated and S. 881, amended, passed in lieu.

June 29, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 18, No. 29 (1982): July 22, Presidential statement.

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